Due service and receipt of a copy of the within is hereby admitted

this.....*day of October, 1929.*

.....

Counsel for Petitioner.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 423

RUFFIN COLLIE, CLINTON COOK, AND ROBBIE ROWE, PETITIONERS,

vs.

THOMAS D. FERGUSSON, F. W. DARLING, AND J. S. DARLING, TRADING AS J. S. DARLING & SON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 26, 1929

CERTIORARI GRANTED OCTOBER 28, 1929

(34,554)

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TRANSCRIPT OF RECORD

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF VIRGINIA, *as*:

At a District Court of the United States for the Eastern District of Virginia, begun and held in the Court Room of said Court House and Post Office Building, in the City of Norfolk, Virginia, on the first Monday of May, being the seventh day of the same month, in the year of our Lord one thousand Nine Hundred and Twenty-Eight.

Present: The Honorable D. Lawrence Groner, Judge of the District Court of the United States for the Eastern District of Virginia.

Among other were the following proceedings, to-wit:

F. W. Darling and J. S. Darling, trading as J. S. Darling and Son, Libellants,
and
Ruffin Collie, Clinton Cook, and Robbie Rowe; Nye, The Engine Man, Incorporated, S. M. Sinclair, W. J. Williamson, J. C. Council, E. T. Lawson and I. E. Lawson, trading as E. T. Lawson & Son, L. Johnson and H. L. Corkran, trading as Johnson and Corkran, and J. V. Bickford, Intervening Libellants,
v.
Power Boat "Dola Lawson" and Thomas D. Fergusson, her owner, Respondents.

In Admiralty. No. 4809.

LIBEL.

(2) Filed May 14, 1928.

F. W. Darling and J. S. Darling trading as J. S. Darling and Son, Libellants,
Against
The Power Boat "Dola Lawson" and Thomas D. Fergusson, owner.
} In Admiralty.

To the Honorable D. Lawrence Groner, Judge of the said court:

The libel of F. W. Darling and J. S. Darling trading as J. S. Darling Son against the Power Boat "Dola Lawson" of Hampton, Virginia, her tackle, apparel and furniture, and against all persons intervening for their interest therein, and especially Thomas D. Fergusson, owner, in a cause of contract, civil and maritime, alleges as follows:

1. During the years 1926 and 1928, the said vessel being at Hampton, Virginia, and standing in need of certain repairs, supplies or other necessaries, the libellant, upon the order of the owner or owners of said vessel or of a person by him or them authorized, furnished to her certain repairs, supplies or other necessaries. The schedule hereto annexed and made a part hereof is a just and true statement of the said repairs, supplies or other necessaries; the charges in said schedule are just and reasonable, and said repairs supplies or other necessaries were necessary and proper; and libellants have a maritime lien therefor.

2. There is now due on account thereof the sum of Five Hundred Forty Three and 07/100 Dollars, ($543.07), with interest thereon as shown by the schedule aforesaid, which although demanded, has not been paid.

(3) 3. The said vessel is now in the Eastern District of Virginia.

4. All and singular the premises are true, and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellants pray that process in due form of law according to the course of this Honorable Court in cases of Admiralty and Maritime jurisdiction may issue against the said vessel, her tackle apparel and furniture; that all persons claiming any right, title or interest therein and especially Thomas D. Fergusson, owner, may be cited to appear and answer on oath all and singular the matters aforesaid; that the said vessel may be condemned and sold to pay the amount due libellants, with interest and costs; and that libellants may have such other and further relief as in law and justice they may be entitled to receive.

F. W. DARLING and
J. S. DARLING,
trading as J. S. Darling and Son,
By R. AUTHOR JETT,
Proctor under the Rule.

KELSEY & JETT,
Citizens Bank Bldg. Norfolk, Va.
Proctors.

Subscribed and sworn to before me this 14th day of May A. D., 1928.

EVELYN STROUD,
Notary Public.

My commission expires February 23rd, 1930.

(4) **INTERVENING PETITION OF RUFFIN AND CLINTON COOK, WHO SUE UNDER THE REVISED STATUTES OF THE UNITED STATES PERMITTING SEAMEN TO SUE FOR THEIR WAGES AND TO ENFORCE LAWS FOR THEIR HEALTH AND SAFETY, WITHOUT SECURITY OR PREPAYMENT OF COSTS.**

Filed May 16, 1928.

To the Honorable D. Lawrence Groner:

The libel and petition of Ruffin Collie and Clinton

Cook, members of the crew of the Power Boat "Dola Lawson" of which vessel Thomas D. Fergusson is owner against the said Power Boat "Dola Lawson" her boats, rigging, tackle, apparel and furniture, and all persons claiming a lawful interest therein, and/or Thomas D. Fergusson, as owner of said vessel, in a cause of wages and damages, civil and maritime, alleges and propounds as follows:

1. That on or about the 15th day of January, 1928, your petitioner, Ruffin Collie, while said vessel was at Washington, North Carolina, became and was employed by the said Thomas D. Fergusson, owner as aforesaid, as a cook and seaman on board the said Power Boat "Dola Lawson" at the rate of wages of One Hundred Dollars ($100.00) per month, and as such, well and faithfully performed all and singular his duties and labors up to the time he was forced to discontinue same as hereinafter noted.

2. That on or about the 1st day of January, 1928, your petitioner Clinton Cook, who had theretofore been employed on said vessel as a deckhand and oiler was re-engaged, in the same capacities, on board said Power Boat "Dola Lawson", at the rate of wages of Eighty Dollars ($80.00) per month, and as such, well and faithfully performed all and singular his duties and labors up to the time he was forced to discontinue same as hereinafter noted.

3. That at approximately 1:00 P. M. on the 14th day of May, 1928, the said vessel was seized by the Mar-
(5) shal of this Court, under and by virtue of the libel, heretofore filed in this cause by J. S. Darling & Son, to recover a sum upwards of Five Hundred Dollars ($500.00) and costs, and the said Power Boat "Dola Lawson" is now in the charge and custody of said Marshal.

4. That though both of said petitioners were at all times entitled to their wages and extra-wages, by way of overtime as hereinafter noted, for the labor performed by them on said vessel and have repeatedly made demands therefor on the said owner, neither the said wages earned by them, as aforesaid, nor any part thereof (ex-

cept Twenty-Five Dollars ($25.00) paid to Petitioner Collie on or about the 1st day of February, 1928, on account of the wages due him for the half month he performed labor in January, 1928) were paid to them or either of them, and the said wages still remain unpaid, the said vessel and the said respondent having failed and refused to pay your petitioners any sum whatsoever.

5. That by reason of the premises, petitioners,—in addition to Three Hundred and Seventy-Five Dollars ($375.00) straight wages and Twenty Dollars ($20.00) overtime (four nights @ $5.00 per night), due Petitioner Collie and Three Hundred and Sixty Dollars ($360.00) straight wages and Twenty Dollars ($20.00) overtime (four nights @ $5.00 per night), likewise due to Petitioner Cook, and such amounts as might be decreed each of them by reason of the respondents' breach of contract, —claim to be entitled to demand and have from the said vessel and said respondent "waiting time" under and by virtue of the provisions of Section 4529 of the Revised Statutes of the United States, as amended, that is to say. —Two days pay for each day that their wages, due for work done as aforesaid, are withheld without sufficient cause. And Petitioner Collie further claims to be entitled to return transportation and subsistence to Washington, North Carolina, the port of his shipment.

6. That in addition to the libel of the said J. S. Dar-
(6) ling & Son, an intervening petition has been filed herein by Nye The Engine Man, Incorporated, claiming the sum of Three Hundred and Ten and 37/100 Dollars ($310.37) and costs, and your petitioners, on the basis of these claims and taking into consideration that other claims will probably be filed, are advised and believe that it will be to the best interest of all parties to have the said power boat sold at the earliest possible moment in order to avoid any unnecessary expense, all of which will most likely have to be borne by the lienors. Petitioners further set forth that their claims for "waiting time" are increasing at the aggregate rate of Twelve Dollars (12.00) per day and that if their claims are not paid until a distribution is had in the ordinary course, in view of the broken down condition of the said power boat and the present low value of vessels of this character,

there will not be a sufficient sum realized from its sale to cover the amounts which will be lawfully due unto your said petitioners.

7. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, petitioners pray that process in due form of law, according to the course of this Honorable Court, in causes of Admiralty and Maritime jurisdiction, may issue against the Power Boat "Dola Lawson", her boats, rigging tackle, apparel and furniture, and that all persons having any interest therein may be cited to appear and answer on oath all and singular the matters aforesaid; and that Thomas D. Fergusson, owner of said vessel be cited to appear and answer on oath the matters aforesaid; that the said vessel be forthwith condemned and sold to pay the amount of petitioners' claims for their earned wages totaling Seven Hundred and Seventy-Five Dollars ($775.00) as aforesaid, (7) together with the "waiting time" herein prayed for and proper damages for the respondents' breach of contract, including Petitioner Collie's transportation and subsistence to Washington, North Carolina, and costs, and that, in addition, any goods and chattels of the said owner may be also sold and condemned to pay any deficiency, and that the petitioners have such other and further relief as may be just and proper.

RUFFIN COLLIE,
CLINTON COOK.

J. L. MOREWITZ and
PERCY CARMEL,
Proctors for Petitioners.

Subscribed and sworn to before me on this 15th day of May, 1928.

J. L. MOREWITZ,
Notary Public.

INTERVENING LIBEL AND PETITION OF S. M. SINCLAIR

(8) Filed May 16, 1928.

To the Honorable D. Lawrence Groner, Judge of the said Court:

The intervening libel and petition of F. C. Sinclair trading as Motor Boat Machine Works against the Power Boat "Dola Lawson" of Hampton, Virginia, her tackle, apparel and furniture, and against all persons intervening for their interest therein, and especially Thomas D. Fergusson, owner, in a cause of contract, civil and maritime, alleges as follows:

1. During the year 1927 and 1928, the said vessel being at Hampton, Virginia, and standing in need of certain repairs, supplies or other necessaries, the libellant and petitioner, upon the order of the owner or owners of said vessel or of a person by him or them authorized, furnished to her certain repairs, supplies or other necessaries. The schedule hereto annexed and made a part hereof is a just and true statement of the said repairs, supplies or other necessaries; the charges in said schedule are just and reasonable, and said repairs supplies or other necessaries were necessary and proper; and libellant and petitioner has a maritime lien therefor.

2. There is now due on account thereof the sum of Three Hundred Fifty Five and 49/100 Dollars ($355.49), with interest thereon as shown by the schedule aforesaid, which although demanded, has not been paid.

3. The said vessel is now in the Eastern District of Virginia.

4. All and singular the premises are true, and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

(9) Wherefore, libellant and petitioner prays that process in due form of law according to the course of this Honorable Court in cases of Admiralty and Maritime jurisdiction may issue against the said vessel, her tackle,

apparel and furniture; that all persons claiming any right, title or interest therein and especially Thomas D. Fergusson, owner, may be cited to appear and answer on oath all and singular the matters aforesaid; that the said vessel may be condemned and sold to pay the amount due libellant and petitioner, with interest and costs; and that libellant and petitioner may have such other and further relief as in law and justice he may be entitled to receive.

F. M. SINCLAIR,
trading as Motor Boat Machine Works
By R. ARTHUR JETT,
Proctor under the Rule.

KELSEY & JETT,
Citizens Bank Bldg., Norfolk, Va.
Proctors.

Subscribed and *sowrn* to before me this 16th day of May, A. D., 1928.

EVELYN STROUD,
Notary Public.

My commission expires February 23rd, 1930.

LIBEL AND PETITION OF E. T. LAWSON & SON.

(10) Filed May 21, 1928.

To the Honorable D. Lawrence Groner, Judge of the said Court:

The libel and petition of E. T. and I. E. Lawson, partners trading as E. T. Lawson & Son, against the Power Boat Dola Lawson her tackle, apparel and furniture, and against all persons intervening for their interest therein, and against the respondent hereinabove named, in a cause of contract, civil and maritime, alleges as follows:

1. During the years 1927 and 1928 said vessel being at Hampton, Virginia, and standing in need of certain repairs, supplies or other necessaries, the libellant and petitioner, upon the order of the owner or owners

of said vessel or of a person by him or them authorized, furnished to her certain repairs, supplies or other necessaries; and the said respondent promised to pay for same whenever requested so to do. The schedule hereto annexed and made a part hereof is a just and true statement thereof; the charges in said schedule are just and reasonable, and said repairs, supplies or other necessaries were necessary and proper; and libellant and petitioner has a maritime lien therefor.

2. There is now due on account thereof the sum of six hundred and eighty seven and 36/100 Dollars ($687.36), with interest thereon as shown by the schedule aforesaid, which, although demanded, has not been paid.

3. The said vessel is now in the eastern District of Virginia.

4. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

(11) Wherefore, the libellant and petitioner prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against said vessel, her tackle, apparel and furniture, and against the aforesaid respondent; that all persons claiming any right, title or interest in said vessel, and also said respondent, may be cited to appear and answer on oath all and singular the matter aforesaid; that said vessel may be condemned and sold to pay the amount due libellant and petitioner, with interest and costs; and that libellant and petitioner may have a decree for said amount against the respondent, and such other and further relief as in law and justice it may be entitled to receive.

E. T. LAWSON & SON,
E. T. LAWSON.

HUGHES, LITTLE & SEAWELL, *Proctor.*

Subscribed and sworn to before me this 21st day of May, A. D., 1928, by E. T. Lawson.

JULIA K. GOFF,
Notary Public.

Law Offices of
Hughes, Little & Seawell,
Norfolk, Virginia.

INTERVENING LIBEL AND PETITION OF W. J. WILLIAMSON, TRADING AS ETC.

(12) Filed May 24, 1928.

To the Honorable D. Lawrence Groner, Judge of the said Court:

The intervening libel and petition of W. J. Williamson, trading as Williamson's, against the Power Boat "Dola Lawson", of Hampton, Virginia, her tackle, apparel and furniture, and against all persons intervening for their interest therein, and especially Thomas D. Fergusson, owner, in a cause of contract, civil and maritime, alleges as follows:

1. During the year 1928, the said vessel being at Hampton, Virginia, and standing in need of certain repairs, supplies or other necessaries, the libellant, upon the order of the owner or owners of said vessel or of a person by him or them authorized, furnished to her certain repairs, supplies or other necessaries. The schedule hereto annexed and made a part hereof is a just and true statement of the said repairs, supplies or other necessaries; the charges in said schedule are just and reasonable, and said repairs, supplies or other necessaries were necessary and proper; and libellant has a maritime lien therefor.

2. There is now due on account thereof the sum of Thirty and 41/100 Dollars ($30.41), with interest thereon as shown by the schedule aforesaid which although demanded, has not been paid.

3. The said vessel is now in the Eastern District of Virginia.

4. All and singular the premises are true, and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that process in due form (13) of law according to the course of this Honorable Court in cases of Admiralty and Maritime jurisdiction may issue against the said vessel, her tackle, apparel and furniture; that all persons claiming any right, title or interest therein and especially Thomas D. Fergusson, owner, may be cited to appear and answer on oath all and singular the matters aforesaid; that the said vessel may be condemned and sold to pay the amount due libellant, with interest and costs; and that libellant may have such other and further relief as in law and justice he may be entitled to receive.

W. J. WILLIAMSON,
trading as Williamson's
By R. ARTHUR JETT,
Proctor under the Rule.

KELSEY & JETT,
Citizens Bank Bldg., Norfolk, Va.
Proctors.

Subscribed and sworn to before me this 24th day of May, A. D., 1928.

EVELYN STROUD,
Notary Public.

My commission expires February 23rd, 1930.

INTERVENING LIBEL AND PETITION OF J. C. COUNCIL.

(14) Filed May 24, 1928.

To the Honorable D. Lawrence Groner, Judge of the said court:

The intervening libel and petition of J. C. Councill against the Power Boat "Dola Lawson" of Hampton, Virginia, her tackle, apparel and furniture, and against all persons intervening for their interest therein, and especially Thomas D. Fergusson, owner, in a cause of contract, civil and maritime, alleges as follows:

1. During the year 1927, the said vessel being at Hampton, Virginia, and standing in need of certain repairs, supplies or other necessaries, the libellant, upon the order of the owner or owners of said vessel or of a person by him or them authorized, furnished to her certain repairs, supplies or other necessaries. The schedule hereto annexed and made a part hereof is a just and true statement of the said repairs, supplies or other necessaries; the charges in said schedule are just and reasonable, and said repairs, supplies or other necessaries were necessary and proper; and libellant has a maritime lien therefor.

2. There is now due on account thereof the sum of Ninety Dollars and Thirty-Five Cents ($90.35), with interest thereon as shown by the schedule aforesaid, which although demanded, has not been paid.

3. The said vessel is now in the Eastern District of Virginia.

4. All and singular the premises are true, and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that process in due form (15) of law according to the course of this Honorable Court in cases of Admiralty and Maritime jurisdiction may issue against the said vessel, her tackle, apparel and furniture; that all persons claiming any right, title or interest therein and especially Thomas D. Fergusson, owner, may be cited to appear and answer on oath all and singular the matters aforesaid; that the said vessel may be condemned and sold to pay the amount due libellant, with interest and costs; and that libellant may have such other and further relief as in law and justice he may be entitled to receive.

J. C. COUNCILL,
By R. ARTHUR JETT,
Proctor under the Rule.

KELSEY & JETT,
Citizens Bank Bldg., Norfolk, Va.
Proctors.

Subscribed and sworn to before me this 24th day of May, A. D., 1928.

EVELYN STROUD,
Notary Public.

My commission expires February 23rd, 1930.

INTERVENING PETITION OF JOHNSON & CORKRAN.

(16) Filed May 25, 1928.

To the Honorable D. Lawrence Groner, Judge of the Court aforesaid:

The intervening libel and petition of L. Johnson and H. L. Corkran, partners trading as Johnson and Corkran, of Crittenden Virginia, operators of a Maritime Railway, against the Power Boat "Dola Lawson", whereof, Thomas Furguson is owner, her engines, rigging, tackle, apparel and furniture and against the said Thomas D. Fergusson and all other persons intervening for their *interested* therein in a cause of contract, civil and maritime, *alleged* as follows:

1. That during the month of July in the year 1927, the said Power Boat, "Dola Lawson", then in the harbor or Crittenden, Virginia, and standing in need of certain repairs, the libellant at the request of the owner of the said Power Boat "Dola Lawson", or his agents, furnished to her, certain labor and repairs; that the schedules hereto annexed and prayed to be read as a part of this libel, are a just and true statement of said labor and repairs; that the charges in said schedules are just and reasonable and that said labor and repairs were necessary and proper and were furnished on the credit of the vessel as well as of her owner and constituted a lien thereon whether by the general maritime law or by the statutes for such cases made and provided:

2. That there is now due to the said libellants on account od said labor and repairs, the sum of $423.50 with interest thereon from July 16, 1927, as shown by the schedules aforesaid, which *allthough* often demended, has not been paid, nor any part thereof:

(17) 3. That the said vessel is now in the Eastern District of Virginia in the custody of the *Marshall* of this Court:

4. That all and singular the premises are true, and within the Admiralty and Maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE the libellant prays that process in due form of law according to course of this Honorable Court in cases of Admiralty and Maritime jurisdiction may issue against the said vessel, her engines, rigging, tackle, apparel and furniture, and against the owner of the said vessel and that all persons claiming any rights, title or interest therein may be cited to appear and answer on oath all and singular, the matters aforesaid; and that the said vessel may be *condemed* and sold to pay the amount due the libellants, with interest and costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

JOHNSON & CORKRAN,
By H. L. CORKRAN.

HENRY BOWDEN,
SAMUEL E. FORWOOD, Proctors.

STATE OF VIRGINIA,
(18) County of Nansemond, to-wit:

This day H. L. Corkran personally appeared before the undersigned, a Notary Public in and for the County aforesaid, in the State of Virginia and after being duly sworn by me in my said County subscribed the foregoing libel and made oath that he is a member of the partnership of Johnson and Corkran and that as such he is duly authorized to sign the foregoing libel and make affidavit thereto; that the matters and things stated in the foregoing libel are true and that the schedule thereto attached is just and reasonable, due and unpaid according to the best of his knowledge, information and belief.

Witness my hand and Notarial seal this 24 day of May, 1928.

MRS. J. H. SHREVES,
Notary Public.

My commission expires January 2, 1931.

CLAIM OF J. V. BICKFORD.

(19) Filed May 29, 1928.

Mr. T. D. Ferguson,
Power Boat—Dola Lawson
Railway Bill—Caulking

In Account With

J. V. BICKFORD

Apr. 27	Labor	7.50	
"	"	n 12.50	
30	"	11.00	
	"	11.25	
			42.25

I certify that the above is a true and correct of T. D. Fergusson's account.

J. V. BICKFORD.

Subscribed and sworn to before me this 28th day of May 1928.

R. V. BELL,
Notary Public.

(20) (Original Filed May 15, 1928)

AMENDED INTERVENING LIBEL OF NYE, THE ENGINE MAN, INC.

Filed June 8th, 1928.

To the Honorable D. Lawrence Groner, Judge of the said court:

The intervening libel of Nye the Engine Man, In-

corporated, against the Power Boat "Dola Lawson" of Hampton, Virginia, her tackle, apparel and furniture and against all persons intervening for their interest therein and especially Thomas D. Fergusson, owner, in a cause of contract, civil and maritime, alleges as follows:

1. During the year 1928, the said vessel being at Hampton, Virginia, and standing in need of certain repairs, supplies or other necessaries, the intervening libellant, upon the order of the owner or owners of said vessel or of a person by him, or them authorized, furnished to her certain repairs, supplies or other necessaries. The schedule hereto annexed and made a part hereof is a just and true statement of the repairs, supplies or other necessaries; the charge in said schedule are just and reasonable and said repairs, supplies or other necessaries, were necessary and proper; and intervening libellants have a maritime lien therefor.

2. There is now due on account thereof the sum of Three Hundred Eighty and 27/100 Dollars ($380.27) with interest thereon as shown by the schedule aforesaid, which although demanded has not been paid.

3. The said vessel is now in the Eastern District of Virginia.

4. All and singular the premises are *ture*, and *with* the Admiral*ty* and Maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your intervening libellants pray that process in due form of law according to the course of this Honorable Court in cases of Admiral*ty* and Maritime (21) jurisdiction may issue against the said *vellel*, her tackle, apparel and furniture; that all persons claiming an*d* right, title or interest there*on* and especially Thomas D. Fergusson, owner, may be cited to appear and answer on oath all and singular the matters aforesaid; that the said vessel may be condemned and sold to pay the amount due the intervening libellants, with interest and costs; and that the intervening libellants may have such other

and further relief as in law and justice they may be entitled to receive.

NYE THE ENGINE MAN INC.
By L. B. NYE.

WALTER SIBERT,
308-10-12 Royster Bldg.,
Norfolk, Va.
Proctor.

Subscribed and sworn to before me this 8 day of June A. D. 1928.

WALTER SIBERT,
Notary Public.

My commission expires on the 16th day of July, 1929.

INTERVENING PETITION OF ROBBIE ROWE, EX-ENGINEER ON THE POWER BOAT "DOLA LAWSON".

(22) Filed June 23, 1928.

To the Honorable D. Lawrence Groner

The libel and petition of Robbie Rowe, ex-member of the crew of the Power Boat "Dola Lawson" of which vessel Thomas D. Fergusson is owner against the said Power Boat "Dola Lawson" her boats, rigging, tackle, apparel and furniture, and all persons claiming a lawful interest therein, and/or Thomas D. Fergusson, as owner of said vessel, in a cause of wages and damage, civil and maritime, alleges and propounds as follows:

1. That on or about the 1st day of September, 1927, your petitioner, Robbie Rowe, became and was employed by the said Thomas D. Fergusson, owner as aforesaid, as a seaman on board the said Power Boat "Dola Lawsn" at the rate of wages of Twenty-Five Dollars ($25.00) per week, and as such, well and faithfully performed all and singular his duties and labors for six (6) weeks thereafter, when his employment terminated by

mutual consent, but no part of said wages, (except Five Dollars ($5.00) paid him at the end of the third week of his employment) have been paid, though often demanded, and there is now due your petitioner a balance of One Hundred and Forty-Five Dollars ($145.00) on account of his said wages.

2. That though your petitioner was at all times entitled to the balance of his wages for the labor performed by him on said vessel and has repeatedly made demand therefor on the said owner, neither the said balance of wages earned by him, as aforesaid, nor any part thereof were paid to him, and the said wages still remain unpaid, the said vessel and the said respondent having failed and refused to pay your petitioner any sum whatsoever, other than the aforesaid Five Dollars ($5.00).

3. That by reason of the premises, petitioner claims to be entitled to demand and have from the said vessel (23) and said respondent "waiting time" under and by virtue of the provisions of Section 4529 of the Revised Statutes of the United States, as amended, that is to say:—Two days pay for each day that the balance of his wages, due for work done as aforesaid, are withheld without sufficient cause.

4. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, petitioner prays that process in due form of law, according to the course of this Honorable Court, in causes of Admiralty and Maritime jurisdiction, may issue hereon in respect to the proceeds of the sale heretofore had by the Marshal of this Court of the Power Boat "Dola Lawson", her boats, rigging tackle, apparel and furniture, which proceeds are now in the Court's registry, and that all persons having any interest therein may be cited to appear and answer on oath all and singular the matters aforesaid; and particularly that Thomas D. Fergusson, owner of said vessel be cited to appear and answer on oath the matters aforesaid; that this Court will be pleased to enter its decree allowing your petitioner to recover the balance of his said earned

wages, totalling One Hundred and Forty-Five Dollars ($145.00) as aforesaid, together with the "waiting time" herein prayed for, and costs, out of the aforesaid fund now in its registry, and in addition, should there be any deficiency, that he be awarded a judgment over against the said Thomas D. Fergusson, owner for any such deficiency, and that the petitioner have such other and further relief as may be just and proper.

his
ROBBIE (x) ROWE.
mark

Witness:—

J. C. EVANS.

J. L. MOREWITZ,
Proctor for Petitioner.

Subscribed and sworn to before me on this 22nd day of June, 1928.

J. L. MOREWITZ,
Notary Public.

EXCEPTIONS AND ANSWER OF J. S. DARLING AND SON TO INTERVENING PETITION OF ROBBIE ROWE.

(24) Filed July 18, 1928.

Exceptions and answer of J. S. Darling and Son to the intervening petition of Robbie Rowe, respectfully represent unto the Court as follows:

EXCEPTIONS.

The said J. S. Darling and Son except to the intervening petition of the said Robbie Rowe, and the claim of penalties therein on the ground that it appears from the said petition that the said wages were earned during the month of September, 1927, and that no action was taken by the said intervening petitioner to assert his claim until after the claims of other seamen had been adjudicated and a decree of sale entered by this Court and that the said petitioner, by his said delay in enforcing his claim for penalties, has thereby waived the same.

ANSWER.

The said J. S. Darling and Son, for answer to the said intervening petition of Robbie Rowe, *denies* each and every one of the allegations set forth in said petition, and *demands* strict proof thereof.

And for further answer, the said J. S. Darling and Son *alleges* upon information and belief that the said power boat "Dola Lawson", and her owner, are not indebted for wages or on account of fishing share to the said Robbie Rowe in any sum whatsoever, and that the said Thomas D. Fergusson, owner of said power boat, (25) some months ago paid the said Robbie Rowe all sums due him on account of wages or share in proceeds of fish caught by said power boat.

Your respondent accordingly prays that the said intervening petition be dismissed with costs.

J. S. DARLING AND SON,
By R. ARTHUR JETT.

STATE OF VIRGINIA,
City of Norfolk, to-wit:

R. Arthur Jett, being duly sworn, deposes and says that he is authorized to sign the name of said J. S. Darling and Son to the foregoing exceptions and answer, and that the facts stated therein are true to the best of his own knowledge, information and belief.

R. ARTHUR JETT.

Sworn and subscribed to before me this 17th day of July, 1928.

EVELYN STROUD,
Notary Public.

My commission expires February 23rd, 1930.

(26) (Title omitted)

ORDER OF SALE.

Filed June 2, 1928.

This Cause came on this day to be heard on the *lible* and intervening libels and petitions heretofore filed herein and was argued by counsel.

And It Appearing to the Court, that the time allowed by law and the rules of this Court for making defense to the said libel and intervening libels and petitions has elapsed, and that no appearance has been entered and no answer or defense interposed, and that it will be to the best interest of all parties concerned that the said Power Boat "Dola Lawson", now in the custody of the Marshal of this Court, be sold in order to obviate further expense, it is Adjudged, Ordered and Decreed that the said Power Boat "Dola Lawson", her engines, boilers, tackle, apparel and equipment, be sold at public auction at the Plume Street entrance of the United States Post Office and Court House Building, Norfolk, Virginia, for cash to the highest bidder by the Marshal of this District, or his deputy, after five (5) days advertising of the terms, time and place of sale as required by the rules and practice of this Court; that the Marshal, or his deputy, do require of the successful bidder of the said vessel a deposit of twenty-five per cent (25%) of the amount bid to be paid at the time said vessel is knocked down to said bidder and the remainder of said purchase price to be paid within forty-eight (48) hours thereafter; that said sale be subject to the approval of this Court and that the proceeds of sale be de-
(27) posited in the registry of the Court to the credit of this cause to await the further order of the Court herein.

D. LAWRENCE GRONER,
U. S. District Judge.

Norfolk, Virginia.

(28) (Caption omitted)

MARSHAL'S REPORT OF SALE.

Filed June 20, 1928.

Honorable D. Lawrence Groner,
United States District Judge,
Eastern District of Virginia.

Sir:

As Marshal of said Court I have to report that in obedience to an Order in the said cause entered on the

2nd day of June, 1928, and after complying with said order by advertising the time, place and terms of sale, I sold on the 18th day of June, 1928, the Power Boat Dola Lawson at Public Auction to E. T. Lawson of Hampton, Virginia, and H. L. Corkran, of Crittenden, Virginia, for the sum of Sixteen Hundred and Fifty Dollars ($1,650.00) that being the highest bid, and have paid the same to the Clerk of this Court to be by him deposited in the Registry of the Court.

Respectfully submitted,

CLARENCE G. SMITHERS,
United States Marshal.
By G. S. PITMAN,
Deputy U. S. Marshal.

Norfolk, Aa.

(29) **STATEMENT OF THE EVIDENCE BEFORE HONORABLE D. LAWRENCE GRONER, UNITED STATES DISTRICT JUDGE, AT NORFOLK, VIRGINIA, JUNE 8TH, 1928.**

Narrative filed in Clerk's Office December 19, 1928.

Present: Messrs. Kelsey & Jett for the libelant, Darling & Son, and petitioners Sinclair, Williamson and Counc'l; Mr. H. H. Little for E. T. Lawson and Son; Mr. Walter Sibert for Nye, the Engineman, Inc.; Mr. J. L. Morewitz for the petitioning seamen; Mr. Samuel E. Forwood for Johnson & Corkran.

Mr. FORWOOD: I would like to make a motion that this case be not closed today. I didn't get notice in time enough to get my client over here.

CLINTON COOK, one of the petitioning seamen, sworn, testified as follows:

Examined by Mr. MOREWITZ:

I was employed on the Power-boat "Dola Lawson" to work on the deck and as oiler for the engine. This boat had a Mianus Diesel oil engine. I went aboard her this last time on the first of January, 1928. Mr. Thomas

D. Fergusson, the owner of the boat, employed me at that time at the rate of $80.00 per month. I have been aboard her ever since, until the United States Marshal seized her.

The COURT: What kind of a boat was it?
Mr. MOREWITZ: Fishing boat.

By Mr. MOREWITZ:

I was supposed to get $80.00 a month but have not been paid any part of it. Mr. Fergusson, the owner, (30) has not paid me nor given me any security for my money, he said he didn't have it. I saw him on the street this morning. The cook aboard the ship was a white man by the name of Collie, whom I know.

Q. How much was he supposed to get a month?

Mr. JETT: We object to the witness testifying—

By the COURT:

Q. How do you know? A. I was there when he told him.

By Mr. MOREWITZ:

Mr. Fergusson, the owner, was supposed to pay Collie $100.00 per month. Collie was hired by Mr. Fergusson at Washington, North Carolina and remained aboard her ever since until she tied up.

By the COURT: How much is this man claiming?
Mr. MOREWITZ: $360.00.
By the COURT: You didn't get anything while you were aboard at all? A. No, sir.
Q. You didn't draw any money at all? A. No, sir.
Q. How long were you aboard? A. I worked from January 1st.

By Mr. MOREWITZ:

I worked for Mr. Fergusson nine years off and on before I went on board the "Dola Lawson" this time and always got my money previous to this. I worked four nights for which I was to be paid $5.00 per night extra. Ruffin Collie, the other man, worked extra the same

nights that I did and was supposed to get the same amount of money for each night.

By the COURT:

Q. Do you know whether he has been paid any of his money or not? A. No, sir. I haven't seen him get anything.

Q. You don't know whether he has been paid anything or not, do you?

Mr. MOREWITZ: We show in the libel he got $25.00.

CROSS EXAMINATION.

By Mr. JETT:

(31) I am not married. This boat was engaged in fishing. She is a trawling vessel. I have never been master of her while she was fishing. During the time she was in the oil trade, for about a year, I guess, my name was on the papers. My name is not still on the papers now. It is not supposed to be on there. I don't know exactly the date. It was, I figure about two years ago when Mr. Fergusson went master, but she wasn't fishing then.

By the COURT:

Q. What was she doing when you were master? A. She wasn't fishing.

Mr. MOREWITZ: Carrying oil for the Texas Company.

By the COURT:

Q. You were master then? A. Yes, sir.

By Mr. JETT:

Q. Your name so showed on the papers in the Custom House, didn't it? A. Yes, sir.

By the COURT:

Q. Who was master at this time we are talking about? A. Mr. Fergusson.

Q. Is he the man who owned her? A. Yes, sir.

Q. What was she doing when you went aboard of her in January? A. Fishing.

Q. Where was she fishing? A. North Carolina.

Q. North Carolina waters? A. Yes, sir.

Q. Trawl fishing? A. Yes, sir.

By Mr. JETT:

I was trawl fishing since about the middle of November, 1927, or something like that.

Q. You know, as a matter of fact, that practically all of these men that worked on these boats engaged in trawl fishing work on shares, don't you?

Mr. MOREWITZ: If they were on shares they would have a lien on the share basis. It wouldn't make any difference one way or the other. A. No, sir, I worked on wages.

By Mr. JETT:

(32) I don't know that all of the men that are engaged on trawl boats worked on shares; I haven't ever worked on them on shares. Captain Fergusson promised me $80.00 a month straight on wages. If the "Dola Lawson" made over $2,500 a month, had any luck fishing, he would give me a share. I was not working on shares. Captain Fergusson was going to give me a share in the catch if the boat made over $2,500 a month, but she never made it. I went to work on the "Dola Lawson" about the middle of November, 1927 and worked on her up until Christmas. She was engaged in trawl fishing at that time and I was getting wages of $20.00 a week. I went on her again the last time, on the first of January, 1928, when the boat was on the railway. I am not sure, but I think somewhere about the 10th, or the 7th or 8th of January, 1928, she started as a fishing boat in the trawling business when we left Hampton bound south. Mr. Fergusson hired me in Hampton this last time and promised me $80.00 a month. If we had any luck, got a good catch, and made over $2,500 a month, he would give me a bonus. He was not to give me any thing else excusing night work, we don't always have night work to do on boats; when we fish a night, we work all night and Captain Fergusson pays $5.00 each night for that. I tell the Court too, I worked on the "Dola Lawson" from the first of January, 1928 until J. S. Darling & Son libeled her in the middle of May and didn't draw a cent. As to what I lived on during that time, Captain Fer-

gusson was feeding me. He caught some fish during that time and sold some in Hampton and some in North Carolina, but didn't pay me a penny. There were three men employed on this boat altogether, Captain Fergusson, Ruffin Collie and myself. The "Dola Lawson" was (33) actually engaged in fishing all the time from January 1st, 1928, after we came off the railway, around about the 10th of January, until she was libeled on May 14th. Sometimes it would be three or four weeks, I guess, before we would take the fish into port to sell them. During that time we would stay on board the boat in Virginia or North Carolina waters. She was not cruising all that time, but we would go around and lay there three or four days, we couldn't always go out on the ocean because of bad weather. I don't know how many fish we caught during this time from January until May, when the boat was libeled.

By the COURT:

Q. What kind of fish did you catch? A. Catch Croakers, King fish and Flounders.

Q. How many times did he take fish in down in North Carolina to sell them? A. I think he made about three trips.

Q. Who did he take them to? A. Taken some to Washington and some Elizabeth City and Hampton.

Q. You made about three trips down in North Carolina, if I understand you right; is that right? A. Yes, sir.

Q. How many trips did you make in to deliver fish in Virginia? A. Well, we haven't caught any fish in Virginia—over twenty barrels.

Q. How many have you sold in Hampton, regardless of where you caught them? A. I say about twenty barrels.

Q. Is that all you sold in Hampton? A. Yes, sir.

Q. The rest of them you sold down in North Carolina? A. Yes, sir.

Q. Who was the dealer that you sold them to down in Washington? A. I don't know his name.

Q. Who was the dealer you sold them to in Elizabeth City? A. I don't know.

Q. Who was the dealer you sold them to in Hampton; you know him don't you? A. Lewis.

CLINTON COOK.

Q. How long have you been living in Hampton? A. I have been off and on about nine years.

Q. You don't know the name of the dealer in Hampton?

Mr. MOREWITZ: He said Lewis.

A. I said Lewis in Hampton is all I know, fish dealer.

By Mr. JETT:

(34) I don't know how much Captain Fergusson got for the twenty barrels of fish he sold to Mr. Lewis in Hampton. And don't know how much twenty barrels of fish generally sell for, but I do know that the fish that were sold to Mr. Lewis were bad.

By the COURT:

Q. You said the fish were bad? A. Yes, sir.

Q. What was the matter with it? A. We had them too long and the ice was melted.

By Mr. JETT:

I don't know whether Captain Fergusson got anything for them or not. Captain Fergusson hasn't any money. I asked him for my money and he said he would give it to me when he got it. I didn't file any libel or take any steps to collect my money until after the libel of J. S. Darling was filed. I know Mr. Nye, the engine man, the gentleman who is now sitting in the court-room. I recall his coming aboard the "Dola Lawson" when we came in from North Carolina on one trip, he come most any time. I don't remember having any conversation with him with reference to how we were paid, I never discussed that with him.

Q. I am going to show by him that you did discuss it with him on that boat, you and the other man and Mr. Fergusson? A. No, sir.

Q. You don't recall that? A. No, sir.

By Mr. JETT:

Captain Fergusson worked on the "Dola Lawson" every trip, with the exception of about three trips, from

January 1, 1928, until May 14, 1928, the day she was libeled. Ruffin Collie took charge of the navigation of the boat during those three trips, I only handled the engine. Collie was hired to cook and work on deck. I tell the Court that when Captain Fergusson wasn't on board the cook took charge of the navigation of this ves-
(35) sel, after I had been on her papers as master in the past. Collie was employed somewhere about the middle of January, 1928, at Washington, North Carolina, in my preesnce. That was after the vessel had been taken off the railway in Hampton and send down to Washington, North Carolina. Collie left the "Dola Lawson" when she was tied up by the Marshal, I suppose he has gone home.

By the COURT:

Q. Where did he go, do you know? A. North Carolina, I think.

Q. At Washington where you hired him? A. I don't know. He said he lived in Washington, up in the western part of the state, I believe he said.

Q. Is he a married man? A. Not as I know of.

Mr. MOREWITZ: That is all the testimony. We want to introduce a notice that we sent down that we were ready to try this matter. With that, we rest.

Note: This paper was marked libelant's Exhibit No. 1.

(36) F. M. SINCLAIR, one of the repair lien claimants, sworn testified as follows:

Examined by Mr. JETT:

I live in Hampton, Virginia, and know the Powerboat "Dola Lawson". She is a trawl boat of about 120 tons capacity, equipped with a Mianus Diesel engine. Thomas B. Fergusson, the owner of this vessel, lives in Hampton, Virginia.

Q. Did you have any conversation with Mr. Fergusson on the day this vessel was libeled or shortly after she was libeled?

Mr. MOREWITZ: We object to any conversation he

may have had with the master of the boat. He is the respondent here and if there is any judgment there would be a recovery over against him and we certainly can't be a bound by anything he says.

The COURT: What are you going to attempt to prove?

Mr. JETT: I am going to attempt to prove that Capt. Fergusson said these men, every one, were employed on shares.

The COURT: I don't think you can prove it by this man.

Mr. MOREWITZ: You can prove statements my client might have made but he certainly can't prove any that Fergusson made.

By Mr. JETT:

Q. Mr. Sinclair, since January 1st up until the time this vessel was libeled on May 14th, had Fergusson been on that boat all the time or not? A. No, sir.

Q. What part of that time would you say, to the best of your belief, he was not on board?

Mr. MOREWITZ: I object to the best of his belief. If he knows, he can testify.

By the COURT:

Q. Tell us what you know about it? A. When the boat came back from North Carolina where she was fishing, Tom told me he couldn't go on the boat any more.

Q. Who is Tom? A. Mr. Fergusson told me that he couldn't go on the boat.

Mr. MOREWITZ: We object to this.

A. (Continuing) And, of course, I don't think Mr. Fergusson had been on the boat a trip since it came back from North Carolina.

By Mr. JETT:

Q. When was that? A. I couldn't tell you that—sometime in February or the first of March. I am not sure.

By the COURT:

Q. You don't know that definitely? A. I know he (37) hasn't been on it on several trips.

Mr. MOREWITZ: My client has testified he wasn't on her for three trips.

By Mr. JETT:

Q. Do you know who acted as master when he was not on board? A. I couldn't swear to that. I know this man has been accustomed to going as captain when Mr. Fergusson wasn't aboard.

The COURT: The man who owns the boat?

Mr. JETT: I don't know. He is the respondent in this case but evidently nobody represents him and he hasn't come in.

Mr. MOREWITZ: He was in the court room this morning and left.

Mr. JETT: I have never seen him.

Mr. KELSEY: Ask Mr. Sinclair if he has seen him. He knows him.

WITNESS: No, I haven't seen him.

By Mr. JETT:

Q. Mr. Sinclair, what is the custom over in Hampton as to the hiring of these seamen on trawl boats? Are they hired on wages or so much per month or hired on the percentage of the cash?

Mr. MOREWITZ: I object to that.

The COURT: I don't see how that makes any difference. It may have been the universal custom over there and not be true in this particular case. I don't think I can assume these men were hired on shares in the face of this man's positive statement to the contrary unless I have some evidence other than mere habit or custom.

CROSS EXAMINATION.

By Mr. MOREWITZ:

I have a claim against the "Dola Lawson". There

isn't anything unsual for a white man to be in charge of one of these boats while colored men are employed on her. There was nothing unusual about the white man being in charge of the boat. It would be rather out of the ordinary in Hampton for a colored man to be in charge of the boat with a white man under him.

By Mr. JETT:

I never knew Cook to go as master of the boat.

(38) CHARLES H. HEWINS, an employee of J. S. Darling & Son, the libellants who claim a repair lien, sworn and testified as follows:

I am connected with J. S. Darling & Son in Hampton. We have two small power boats about the size of the "Dola Lawson" and two large ones. These boats are engaged in oystering, they are not in the trawl fishing business. The men who work on them are all employed by the week, except the officers.

Q. How much do you pay seamen on those boats?

Mr. MOREWITZ: I object to that, if your Honor please. It is a question of what the contract was in this case.

The COURT: I don't think it makes any difference.

A. $15 a week and the grub bill.

By Mr. MOREWITZ:

Q. Capt. Hewins, it is nothing unusual in a case where a white man and colored man on board one of those boats in Hampton Creek for the while man to be in charge, is there, no matter what the knowledge of the negro is in reference to running the boat? A. It would be usual, I think, for a white man to be in charge.

CLINTON COOK, one of the petitioning seamen, recalled, testified as follows:

Examined by Mr. JETT:

I got my meals and lodging in addition to the wages that I was supposed to receive.

L. B. NYE, President of Nye, the engine man, Inc., one of the supply lien claimants, sworn testified as follows:

Examined by Mr. SIBERT:

My company furnished certain equipment for the "Dola Lawson" from time to time since January. On one of these times when I went aboard this boat, I had a conversation with Clinton Cook, the man who just tes-
(39) tified here, and the other seaman who has filed a libel and Mr. Fergusson, in reference to how these men were paid. That conversation was had in the presence of Mr. Fergusson and each of these other men. The subject wasn't particularly mentioned for any purpose at all. They were going, going from Hampton fishing at that time and I said "Well, I wish you good luck when you *do* down". He said "Yes, we hope so. It has been pretty bad and we don't get anything unless we make it".

By the COURT:

Q. Who said that? A. It was sanctioned by all three.

By Mr. SIBERT:

I don't know and wouldn't say which one of the men made that statement. Anyhow it was sanctioned by all three, that is, if they didn't make any catch they didn't make anything. They all sanctioned that if they had good fishing they would make good money and if they didn't catch any fish they wouldn't make any. That was the general discussion between all of them aboard the boat. The "Dola Lawson" was laying right close to my store near Anheuser Busch pier in Norfolk, she had come in here. I am the president of Nye, the engine man, Inc, and I am familiar with the supplies and repairs furnished to the "Dola Lawson". I have a statement here for the parts and repairs that I furnished to the "Dola Lawson" amounting to $380.27 and interest. $66.17 of the amount was furnished during 1927, the rest of it was furnished during the period from March 9, 1928 until May 9th, 1928. The item of May 9th was furnished while the vessel was on the Marine Railway at Hampton. The total for the supplies fur-

nished in March and May is $314.10, and this was furnished while she was on the Marine Railway in Hamp-
(40) ton.

By Mr. MOREWITZ:

I saw Captain Fergusson this morning, right here at the court-house door down the street. I spoke to Captain Fergusson with reference to this case.

Q. Did you make any effort to get him to come here to bear out your version? A. He said—

Q. I am not asking you what he said? A. Yes, he mentioned it, yes, sir.

Q. Did you ask him to come here to support your statement with reference to this share business? A. Yes, sir, I did.

Q. Did you have any difficulty in getting him to come here? A. No, sir.

Q. He isn't here now, is he? A. Not that I know of.

By Mr. JETT:

Q. What good did it do for him to come over if he wasn't going to stay for the hearing? You didn't ask him to leave, did you? A. I don't know. He said no need of him being here and he was going to attend to some other business.

CHARLES H. HEWINS. recalled, testified as follows:

Examined by Mr. JETT:

The amount of the J. S. Darling claim that I filed in these proceedings is $543.07 and interest claimed on $540.92 from November 4, 1927, and $2.15 from March 30, 1928. The invoice is for repairs done to the "Dola Lawson" at our railway, no part of which has been paid.

F. M. SINCLAIR, recalled, testified as follows:

Examined by Mr. JETT:

I run a machine shop in Hampton, Virginia and have filed a claim in these proceedings. The amount of my invoice against the "Dola Lawson" is $355.49. The

(41) last work that I did, was on the day before the vessel was libeled, the 10th of May, 1928. No part of my invoice has been paid.

By Mr. LITTLE:

My bill shows the date of the first item.

Mr. FORWOOD: I renew my motion that the matter be continued. I didn't have time to get my man over here. I think we can get some pertinent evidence on the question of this wage claim.

E. T. LAWSON, of E. T. Lawson & Son, one of the supply lien claimants, sworn testified as follows:

Examined by Mr. LITTLE:

My name is E. T. Lawson and I live in Hampton, Virginia. I am in the grocery and oil business and have from time to time furnished the "Dola Lawson" with provisions and necessary supplies. I have a statement of my account against this vessel, which is complete and shows the goods furnished, the dates furnished, the credits and the balance due, which totals $687.36 with interest, as shown by the statement that he herewith filed.

Mr. MOREWITZ: I understood Mr. Fergusson would be here. I have never had the pleasure of meeting the gentlemen and wouldn't know him if I saw him. I have a statement here under oath admitting these claims in the nature of an answer that was prepared in Hamp-
(42) ton and if he was here I would have no purpose in offering it. Inasmuch as he is not here, I offer it as evidence.

Mr. LITTLE: We object to it. It is in the form of an answer. He is a respondent personally as well as the vessel.

Mr. JETT: If that document is put in evidence we shall certainly want him here.

The COURT: I don't think you can introduce that.

Mr. MOREWITZ: In this he says that the statements of account are correct with the exception that he paid these men $40 apiece.

The COURT: I rule the paper out but I don't see any-

thing to do but allow these wages unless I have some evidence and I haven't heard any.

Mr. JETT: We certainly haven't had any evidence as to the other man's wages.

The COURT: No.

Mr. JETT: We certainly should object to that being allowed under this testimony this morning.

Mr. MOREWITZ: This man Cook has testified the man was employed at $100 a month.

The COURT: We don't know whether he has been paid.

Mr. MOREWITZ: In the first place, this proceeding is a little irregular in that they have not filed any objection to these claims.

The COURT: That doesn't make any difference. I require every claim to be proved anyhow.

Mr. MOREWITZ: We have filed a libel. When they plead payment or want to prove payment, they have to put evidence on. All we have to show is he was em-
(43) ployed. The burden of proof is on them even at common law.

The COURT: I don't know any rule of that kind anywhere. It does seem remarkable to me that these men, if they were to be paid wages, if that is honestly a fact, should have gone from January to May without a dollar of pay and rather strengthens the suggestion that they weren't working for wages but were working in a partnership but I can't say that is a fact in the face of this colored man's positive statement and in the absence of anything to the contrary I feel obliged to accept his statement and give him his wages but I want proof before I allow the other man's wages.

Mr. MOREWITZ: We will have him here before there is any disposition of the funds.

(44) **STATEMENT OF THE EVIDENCE BEFORE HONORABLE D. LAWRENCE GRONER, UNITED STATES DISTRICT JUDGE, AT NORFOLK, VIRGINIA, JUNE 12, 1929.**

Narrative filed in Clerk's Office, December 19, 1928.

Present: Messrs. Kelsey & Jett for the libelant, Darling & Son, and petitioners Sinclair, Williamson

and Council; Mr. H. H. Little for E. T. Lawson & Son; Mr. Walter Sibert for Nye, the Engineman, Inc.; Mr. J. L. Morewitz for the petitioning seamen; Mr. Samuel E. Forwood for Johnson & Corkran.

RUFFIN COLLIE, one of the petitioning seamen, sworn, testified ao follows:

I was employed on January 15, 1928, by Captain Fergusson to go as a cook and work about the deck on the "Dola Lawson". This took place while she was lay ng at Washington, North Carolina, and my wages were to be $100.00 per month. I continued working on this vessel from that time until the Marshal took charge of her on May 14, 1928, but only received $25.00 on account of my wages, for the half-month I worked in January, 1928, as shown in my petition. Captain Fergusson was drinking a great deal of the time and always told me he had no money when I asked him for my wages. Clinton Cook and myself worked four nights extra, for which Captain Fergusson agreed to pay us, each, $5.00 a night, but neither Cook nor myself received any part of the wages due us, and claimed in our libel, though we both asked Captain Fergusson for the money coming to us on several occasions. We knew he had been in hard luck and he was feeding us and giving us a place to sleep. Both Clinton Cook and myself were working on straight wages. We had an understand-
(45) ing that if the vessel paid more than our wages and her other expenses, we would get a bonus out of what was left over, but we never got anything, except that I received the $25.00 as a part of the $50.00 due me for the time I worked in January. We did our fishing on the ocean off the Virginia and North Carolina coasts. The "Dola Lawson" was entered in the Custom-House as a Coastwise Vessel and Captain Fergusson, the owner, was her master, the ship's papers showing that he was both owner and master. This vessel is licensed to carry on the Coasting Trade and actually traded between Hampton, Virginia, and Washington, North Carolina, at times calling at other ports in Virginia, North Carolina and Maryland to deliver fish and to take on ice, food, fuel and other supplies.

By Mr. KELSEY:

Neither Clinton Cook nor myself worked on a share basis. We were hired at straight wages and no change was ever made in the arrangements we each had with Captain Fergusson. I never did work on shares. I looked to the "Dola Lawson" for my wages. If she had not been libelled I believe that Captain Fergusson would have been able to pay everybody that has a claim against her, as she was just beginning to earn good money when her crank-shaft broke. That ruined everything and on top of it all the boat was libelled. Captain Fergusson kept on promising to pay Cook and me, when we asked him for our money. He told us that he was paying for the food we were eating as well as the oil and supplies for the boat out of the money he was getting for the fish and we knew that he had a lot of personal bills to pay. I don't know just what prices he got for the fish we caught, but he couldn't have gotten much as we didn't catch very many and sometimes they would go bad on us because of the ice melting before we could (46) get back to port. I never told Nye, the engineman, that we were working the "Dola Lawson" on shares and never heard any such matter discussed in my presence, either by Mr. Nye or anyone else.

Examined by the COURT:

Since the "Dola Lawson" was tied up by the Marshal on May 14, 1928, I have been unable to get anything else to do, though I have tried. I have been living with my father, near Washington, North Carolina, but he has nothing for me to do.

CAPTAIN THOMAS D. FERGUSSON, the respondent owner of the "Dola Lawson", sworn as an adverse witness, testified as follows:

Examined by Mr. KELSEY:

There never was anything said between Collie and Cook and myself about their working on shares. The claims asserted by Ruffin Collie and Clinton Collie in their intervening libel are correct. They worked for straight wages, as I was unable to ever get anyone to

work the "Dola Lawson" on a share basis. I agreed to give these men $5.00 a *peice* for each night they worked extra and they have $20.00 each due them on that account.

CROSS EXAMINED.

By Mr. MOREWITZ:

I started out to fight the Darling libel, but after taking the matter up with Mr. Little found out that it was not worth while to do so. Collie and Cook earned the wages they are claiming. I would have been able to pay them if the crank-shaft on the engine had not broken and if the boat had not been libelled immediately thereafter. What litte money I collected was paid (47) out on my old bills and it is true that I also had been drinking. The signature you show me on my formal Answer (Introduced as an exhibit on behalf of Collie and Cook at the hearing on June 8, 1928) is my signature and I swore to this Answer before a Notary Public. Since hearing the testimony of Ruffin Collie today my memory has been refreshed and it is true that the amounts claimed by Collie and Cook in their libel are correct. The "Dola Lawson" is licensed for and at all times was engaged in the Coastwise Trade, both as an oil carrier and while fishing. I have been her master ever since I put her in the fishing business.

At a later date, to-wit, on July 16, 1928, CAPTAIN FERGUSSON was recalled as a witness for the supply and repair lien claimants and testified as follows:

Examined by Mr. KELSEY:

Robbie Rowe worked with me on the "Dola Lawson" on a share basis and when he quit I paid him off. I don't remember what he had coming to him.

CROSS EXAMINED.

By Mr. MOREWITZ:

I did not have any words or any argument with Rowe, but he just quit. All the men working on the "Dola Lawson" were white men at that time. It is true that I had difficulty in keeping white men on her as she

is not a regular fishing vessel. I had used her in the oil business working for the Texas Oil Company. When I lost that job I thought I would make a fishing vessel out of her, but soon found out that she was not suitable for that sort of work as she was not quite large enough. She was a "Licensed Vessel Under 20 Tons" but has always been engaged in the "Coastwise Trade" ever since I owned her; calling at ports in Virginia, North Carolina and Maryland while she was in the fish business.

(48) **DEPOSITIONS TAKEN AUGUST 4, 1928, ON BEHALF OF ROBBIE ROWE.**

Narrative Filed in Clerk's Office, December 19, 1928.

ROBBIE ROWE, one of the petitioning seamen, sworn, testified as follows:

Examined by Mr. MOREWITZ:

My name is Robbie Rowe. The "Dola Lawson" and Captain Thomas D. Fergusson owe me One Hundred and Forty-Five Dollars for wages. I have been going to sea for nine years, am twenty-seven years old, but cannot read or write. Captain Fergusson employed me to go fishing on the "Dola Lawson" at Twenty-Five Dollars a week, while we were both standing near the First National Bank Building, in Hampton, Virginia. Carl Ward (indicating the person referred to) was also present when I was employed. I worked on the "Dola Lawson" for six weeks, but was not paid at the end of each week because Captain Fergusson claimed he just didn't have the money. He had the money so far as I know, but spent it. I wanted some money the third week I was on the "Dola Lawson" and asked Captain Fergusson for it and he didn't have it; he gave me Five Dollars then. He drank all the money up. Captain Fergusson was never sober from the time I went on board his boat until I left. That is what made the row,—his going aboard drunk and wanting me to go to sea with the "Dola Lawson". The first week was up on Friday,—I went out on a Friday and the six weeks would have been up on Saturday. I asked Captain Fergusson for the money when the last week was up, on a Friday. When

I went to him on that last Friday he did not offer to pay me, as he was so drunk he could not settle, and went to him on Saturday morning he was very drunk; he had wasted the money. He told me that he didn't have the money, that he had wasted it. He had been paid by the (49) fish-packer on that Thursday for the fish we caught and came down to the vessel drunk on the next day, Friday. Captain Fergusson did not have a cent when he came down and has not offered to pay me anything since that time, though I have seen him since then about my wages. After he testified before the Court in this case in Norfolk Captain Fergusson came to me one day at the dock and told me he wanted to compromise with me; that he had promised to pay me, but didn't have the money, and wouldn't I compromise with him. He said he had turned the money in, and wanted to know if I would not let it go. I told him "No, I would not". He said he had told in Court that he had paid all the money out and didn't owe anybody; and wanted to compromise with me. I told him I would not do that. He said that it would ruin him. I don't know how many days it was after he had been to Norfolk to testify that he came to me and asked me if I would not compromise with him, and I told him "no". At that time he was as sober as I am this morning.

CROSS EXAMINATION.

By Mr. FORWOOD:

I went to work on this boat on the 1st of September, 1927, and worked six weeks, when I quit on Friday, after we had the trouble. Captain Fergusson was to give me $25.00 a week. Whether he made a cent or whether he didn't make anything, he was to pay me $25.00 a week. I was *suppose* to run the engine and fish the nets on the "Dola Lawson". She was fishing down off the Southern Beach, near Cape Henry. During the six weeks I was on the boat we spent most of the time fishing. We would leave in the morning and stay a day or a night before we came back. Get the fish a day or night before we came in. I cannot tell exactly how many trips we made. The (50) week that Captain Fergusson and I had the trouble, we sold the fish that we caught for a little over $800.00. That was the last week we went out on the

ocean to fish. Captain Fergusson came to town in the morning, and had the trouble, and the fish had been sold and I know he had the money. We never had gotten as much as that before; that was the best week we ever had. The average for the other weeks was not very much. I guess around two or three hundred dollars, something like that. I know that we caught $2,000.00 worth of fish during the time that I was on the boat. I don't know exactly what amount of fish the boat would have to catch, for me to get anything above $25.00 a week. Captain Fergusson told me he would guarantee $25.00 a week, you see, and if he made anything like he ordinarily should he would give me more. He didn't say how much. He just told me he would give me more, just to go on board. I had never worked with him before. I talked to Captain Fergusson at the cross streets in Hampton. He saw that I was home, idle at the time and knew that I had been fishing a lot before. I did not get my $25.00 a week during any of these weeks, I only got $5.00 in the six weeks, that is all I got, on that Friday, and when I quit I didn't have money enough to go home on. I made a demand on Captain Fergusson for the money he owed me. I thought we were going to get a big catch of fish and therefore *keep* on working. He refused to pay me but I kept on working for him because I left it to the man's honesty. I knew the fish were going to hit the Southern beach and I knew the catch would be good, and knew that they always got good prices for them, and I (51) kept on working for him. Captain Fergusson had had bad luck and all that sort of thing, and was way behind, I guess I would help any man who was in bad luck, I would wait on any man. If he had not had that big catch of fish we caught the last week, I intended to get my money out of the boat. I was never supposed to get a portion of the catch. I was supposed to get $25.00 a week for each week, that was the agreement. I knew that he was drunk all the time, but continued to work for him. I knew he had the money, I didn't have any money, and I got $5.00 to go home on. I never saw him sober but once the whole time I was on the "Dola Lawson". I knew he was drinking, but as to where he was getting it from I didn't know. Of course, Captain Fergusson was way behind and had been fishing once before and failed on that, and he came to me and asked

me would I go fishing with him there again. Fishing was always good on the Southern beach and he would make a few dollars. He did not make any promise that he would pay me when he did get this big catch, but he and I were expecting sometime to make a good catch and I knew that, as I had been fishing for nine years. Captain Fergusson was absolutely wrong if he testified that I was working on a division of the catch basis, as I never worked that way, I worked on wages. Carl Ward (indicating) sitting right over here was present when I made the agreement with Captain Fergusson. I left this boat sometime in October, 1927. I didn't bring any action against Fergusson between that time and the time the boat was libeled because I just gave the man time, that is why, just giving him time to pay. I still had confidence enough in the man to think he would pay me, and (52) I thought he would pay me. And he did tell me that he would pay me if he ever made the money, he told me them words. Captain Fergusson and I were right at the Hampton dock when we had the conversation about his wanting to compromise my claim. I could not tell you to save my life how he came to tell me that. We met down there on the dock and he called me off to one side and asked me would I compromise with him. I told him No, I would not, that I had worked for the money and I ought to have it. And he said "You have ruined me, I have been over there and sworn that I didn't owe you or a human being except the two boys that was on there." I said "Well, Tom, I can't help that, I have got to have my money".

RE-DIRECT EXAMINATION.

By Mr. MOREWITZ:

There was only one other man on this boat outside of Captain Fergusson and myself. At times there were three different ones on. He *feed* us all of that time. We were hired men and were not supposed to buy a thing. We didn't have to buy a thing in the world, not a thing. We were all hired men.

CARL WARD, a witness on behalf of Robbie Rowe, sworn, testified as follows:

ROBBIE ROWE.

Examined by Mr. MOREWITZ:

I am twenty-six years old. I have been going to sea about five years; I have been fishing all my life, every day. I was present when Captain Fergusson hired Robbie Rowe, near by the Merchants National Bank, on the cross streets in Hampton. Captain Fergusson agreed (53) with Robbie Rowe to pay him $25.00 a week and might be paid more if he made it. $25.00 a week any ways. There was nothing said about commissions as I know of. Nothing was said about commissions in my presence.

CROSS EXAMINATION.

By Mr. FORWOOD:

Robbie Rowe was to get more than $25.00 a week if they made it. I can't tell you how much Captain Fergusson would have to make before Robbie Rowe was to get anything more than $25.00; but if they didn't make a cent the whole week Robbie Rowe was to get $25.00 a week, he was on wages. Captain Fergusson came there and told Robbie Rowe that he was in hard luck and wanted Robbie Rowe to go out with him and he would guarantee him $25.00 a week, whether he made a cent or not, and if he made more he would pay him more. That is all I know, we are naturally friends together, and I happened to be in town with him that day. I don't know what Captain Fergusson meant by that "more if he made it", I don't know how much more he would have to make. That is all I know. I was not interested at all.

By Mr. MOREWITZ:

He did not hire anybody else at the same time I know of.

ROBBIE ROWE, one of the petitioning seamen, recalled, further testified as follows:

By Mr. MOREWITZ:

The other men working on the boat were getting the same amount that I was, $25.00 a week, and were doing the same kind of work as myself. I was running the (54) engine and fishing and the other guy was cooking and working on deck. There was two on deck.

By Mr. FORWOOD:

Captain Fergusson did not pay these other men a cent. I have been knowing Tom Fergusson a right good while. I say I had known him, I knew him when I met him, and that was all, you see. How come me to get acquainted with Mr. Fergusson—first knowledge, you see, was when he started up fishing, the Captain I am working under now, he helped him to fit his boat up and told him how to fish, and it was through him I got acquainted with him. And he hired another man who was on the boat, and carried him over to Chincoteague, and worked him two weeks and never paid him a cent. Charley Furr and Tom Fergusson were the only men who were on the boat prior to the time that I was on it. When I left a colored fellow that had been working on the "Dola Lawson" when she was running oil for the Texas Oil Company, was working on her. That was before they started fishing with the "Dola Lawson", and they ruined it, the boat, and cut out the oil business.

By Mr. MOREWITZ:

I know a man by the name of Routten. He was an old gentleman who was on the "Dola Lawson" while I worked on her. I don't know anything about his arrangements with Captain Ferguson. He came on board her after I did. I don't know whether he was paid or not.

(55) (EXHIBIT.)

ANSWER TO THE INTERVENING PETITION OF RUFFIN COLLIE AND CLINTON COOK, WHO SUE UNDER THE REVISED STATUTES OF THE UNITED STATES PERMITTING SEAMEN TO SUE FOR THEIR WAGES AND TO ENFORCE LAWS MADE FOR THEIR HEALTH AND SAFETY, WITHOUT SECURITY OR PREPAYMENT.

Filed June 8, 1928.

To the Honorable D. Lawrence Groner:

Your respondent, reserving unto himself all other rights that he may or might have under and by virtue of the above libel and interventions, does hereby on his oath, state as follows:

1. Replying to Paragraph 1 of the above petition, your respondent would state that the time of employment and pay per month is true, but that he did, on two occasions, pay the seamen $10.00 each, on another occasion $15.00, on yet another occasion $5.00, and on another occasion purchased a pair of boots to the value of $4.50, making a total of $44.50, to which he is entitled credit thereupon, and instead of owing and be indebted to Ruffin Collie, in the sum of $375.00, as set forth in Paragraph 5 of the petition, he is only indebted and liable to the amount of $355.50.

2. As to Clinton Cook, instead of being indebted to the sum of $320.00, because he did on two occasions give Cook $10.00, one occasion $5.00, and on another occasion $15.00, making a total of $40.00 credit to which he is entitled, but to which they have not stated they did receive.

All the other alligations in the petition are true except as to the corrections of the amounts, which were paid in cash by him.

(56) THOMAS D. FERGUSSON,
Master of the Power Boat "Dola Lawson", and owner thereof.

Sworn to and subscribed to before me this 31st day of May, 1928.

E. RALPH JAMES,
Notary Public.

During cross examination of defendant, Thos. D. Fergusson on July 16, 1928, at an adjourned hearing, the above papers, signatures & oath were identified by him.

P. J. RILEY, JR.,
Deputy Clerk.

(57) **LIBELLANTS EXHIBIT NO. 1.**

JACOB LOUIS MOREWITZ
Attorney and Counselor at Law
Newport News, Virginia.

May 15, 1928.

Clerk,
U. S. District Court,
Post-Office Building,
Norfolk, Va.

Re: Darling v. Power Boat "Dola Lawson", et al. Libel and Petition of Collie & Cook for Seamen's Wages, etc.

Dear Sir:

I am transmitting to you herewith for filing the petition of Ruffin Collie and Clinton Cook, who were employed as seamen on board the above vessel. Please issue process thereon at your earliest convenience.

Inasmuch as the claims set up by these two seamen are entitled to priority in the distribution of what may be realized from the sale of the above vessel and also involve waiting time under the provisions of R. S. 4529, as amended, I would appreciate it if you would call the matter to the attention of Judge Groner and the proctors for the other lienors, so that an order of sale might be entered immediately and the proceeds distributed without any undue delay, in line with the prayer of the petition now being filed on behalf of my clients.

Thanking you in anticipation, I am

Yours very truly,

JLM/M J. L. MOREWITZ.

CC—Messrs. Kelsey & Jett, &
Walter Sibert, Esq.,
Attorney at Law,
Norfolk, Va.

(58) **LIBELLANTS EXHIBIT NO. 2.**

JACOB LOUIS MOREWITZ
Attorney and Counselor at Law
Newport News, Virginia.

June 22, 1928.

Messrs. Kelsey & Jett,
Attorneys at Law,
Citizens Bank Building,
Norfolk, Virginia.

Messrs. Hughes, Little & Seawell,
Attorneys at Law,
Law Building,
Norfolk, Virginia.

Samuel F. Forwood, Esq.,
Attorney at Law,
Bank of Commerce Building
Norfolk, Virginia.

Walter Sibert, Esq.,
Attorney at Law,
Royster Building,
Norfolk, Va.

Re: Darling v. Power Boat "Dola Lawson" and/or Thomas D. Fergusson, Intervening Petition of Robbie Rowe, former Engineer.

Gentlemen:

Inclosed herewith you will please find a copy of the intervening petition that I am filing on behalf of Robbie Rowe, a former member of the crew of the above vessel. Inasmuch as the amount realized from the sale of this power boat is now in the registry of the Court, I am anxious to have Judge Groner pass on the claims asserted in the instant petition, so that a decree distributing the fund might be entered at the earliest possible moment.

I made tentative arrangements yesterday with Judge Groners secretary, Mr. Jackson, for a hearing today, but as Mr. Jett desired to summons witnesses, the matter had to go over. However, I trust that it will be convenient for all the proctors interested to have the matter disposed of sometime next week, and would appreciate your getting in touch with Mr. Jackson with that end in view.

Please acknowledge receipt of this letter and advise me what day, if any, has been set for the hearing on these claims.

Yours very truly,

JLM/PH J. L. MOREWITZ.

(59) **LIBELLANTS EXHIBIT NO. 3.**

JACOB LOUIS MOREWITZ
Attorney and Counselor at Law
Newport News, Virginia.

July 3, 1928.

Messrs. Kelsey & Jett,
Attorneys at Law,
Citizens Bank Building,
Norfolk, Virginia.

Messrs. Hughes, Little & Seawell,
Attorneys at Law,
Law Building,
Norfolk, Virginia.

Samuel F. Forwood, Esq.,
Attorney at Law,
Bank of Commerce Building,
Norfolk, Virginia.

Walter Sibert, Esq.,
Attorney at Law,
Royster Building,
Norfolk, Virginia.

Re: Darling v. Power Boat "Dola Lawson" and/or Thomas D. Fergusson.

Gentlemen:

On the assumption that there will be no contest in regard to the claim of Robbie Rowe, a copy of whose petition was forwarded you on June 22nd, 1928, I have drafted a form of decree distributing the proceeds of the sale. If Judge Groner finally concludes to allow the three seamen, whom I represent, 'waiting time' under R. S. 4529 there will, of course, be nothing left for the other claimants. In that event, the form of decree will have to be redrafted to carry out the views that Judge Groner might arrive at.

In the meantime, a copy of the present draft is being forwarded you for such comment and objections as you might care to make in regard thereto. You will note that I have proceeded on the theory that all claims more than a year old are not eligible to participate in the distribution, but are merely personal claims against the owner.

Yours very truly,

JLM/PH J. L. MOREWITZ.

(60) **LIBELLANTS EXHIBIT NO. 4.**

JACOB LOUIS MOREWITZ
Attorney and Counselor at Law
Newport News, Virginia.

July 9, 1928.

Messrs. Kelsey & Jett,
Attorneys at Law,
Citizens Bank Building,
Norfolk, Virginia.

Messrs. Hughes, Little & Seawell,
Attorneys at Law,
Law Building,
Norfolk, Virginia.

Samuel F. Forwood, Esq.,
Attorney at Law,
Bank of Commerce Building,
Norfolk, Virginia.

Walter Sibert, Esq.,
Attorney at Law,
Royster Building,
Norfolk, Virginia.

Re: Darling v. Power Boat "Dola Lawson" and/or Thomas D. Fergusson.

Gentlemen:

Since writing you on July 3rd, I have revamped the last three pages of the draft of the decree which I am submitting to Judge Groner and beg to inclose herewith carbon copies of the said pages numbered four, five and six.

Should you have any objection to the decree as now drawn, I would appreciate your advising me of same by return mail. In any event, please acknowledge receipt of this letter, as I am anxious to have the matter disposed of without any further delay, in view of the fact that Judge Groner is shortly leaving for his vacation.

Trusting that you will let me hear from you promptly I am

Yours very truly,

JLM/PH

J. L. MOREWITZ.

(61) **LIBELLANTS EXHIBIT NO. 5.**

JACOB LOUIS MOREWITZ
Attorney and Counselor at Law
Newport News, Virginia.

August 2, 1928.

Messrs. Kelsey & Jett,
Attorneys at Law,
Citizens Bank Building,
Norfolk, Virginia.

Messrs. Hughes, Little & Seawell,
Attorneys at Law,
Law Building,
Norfolk, Virginia.

Samuel F. Forwood, Esq.,
Attorney at Law,
Bank of Commerce Building,
Norfolk, Virginia.

Walter Sibert, Esq.,
Attorney at Law,
Royster Building,
Norfolk, Virginia.

Re: Darling v. Power Boat "Dola Lawson" and/or Thomas D. Fergusson, Intervening Petition of Robbie Rowe, former engineer.

Gentlemen:

Inclosed herewith you will please find a copy of the notice to take depositions on behalf of Robbie Rowe in the above matter.

At the last hearing Judge Groner directed that the above petitioner's depositions be taken on twenty-four hours notice and transmitted to him. Since that time I have endeavored to arrange for the taking of this evidence with Messrs. Kelsey and Jett, but for one reason or another we have been unable to get together on the fixing of a date.

In view of the money being tied up in the registry of the Court I am anxious to get the final decree entered without any further delay and would appreciate your co-operation in getting the matter disposed of.

I trust that you will favor me by acknowledging receipt of this letter by return mail.

Yours very truly,

JLM/PH J. L. MOREWITZ.

(62) **LIBELLANTS EXHIBIT NO. 6.**

JACOB LOUIS MOREWITZ
Attorney and Counselor at Law,
Newport News, Virginia.

August 17, 1928.

Honorable D. Lawrence Groner,
Judge, U. S. District Court,
Post-Office Building,
Norfolk, Virginia.

Re: Darling v. Power Boat "Dola Lawson" and/or Thomas D. Fergusson.

Dear Judge:

The deposition of Robbie Rowe has just been delivered to me, and, pursuant to your direction, the same is herewith being transmitted to you, along with the draft of a decree which is objected to by the proctors for the repair and supply lien claimants. I understand that they will submit another draft, which, insofar as it conflicts with the inclosed, is objected to by me.

In preparing the attached draft I have endeavored to follow what I understood your Honor's conclusions to be. On the assumption that Robbie Rowe's claim would be allowed, I have provided therein that he should recover the amount of wages proven to be due him. The concluding paragraph directs that the checks covering the costs ordered to be paid and the wage claims should be delivered to the respective parties forthwith and I trust that the form and substance of the whole draft will meet with your approval.

My clients have been without their wages for some little time, and I hope that the decree will be entered at the earliest possible moment, so that the checks might be prepared and forwarded for your Honor's signature.

Most respectfully,

JLM/PH J. L. MOREWITZ.

CC—Messrs. Kelsey & Jett,
Messrs. Hughes, Little & Seawell,
Samuel F. Forwood, Esq.,
Walter Sibert, Esq.,
Norfolk, Virginia.

(63) (EXHIBIT)

DRAFT OF FINAL DECREE ASKED FOR BY REPAIR AND SUPPLY LIEN CLAIMANTS.

Submitted August 20, 1928.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA.

F. W. Darling and J. S. Darling, trading as J. S. Darling and Son, Libellants,
v.
The Power Boat "Dola Lawson" and Thomas D. Fergusson, Owner.

In Admiralty.
No. 4809.

This cause came on this day to be again heard on the pleadings and proof, the decree of sale entered herein on June 2nd, 1928 and the Marshal's Report of sale filed on June 20th, 1928, and was argued by counsel.

On consideration whereof, it appearing to the Court from the report of Clarence G. Smithers, United States Marshal, filed herein that pursuant to the decree entered herein on June 2nd, 1928, and in accordance with the terms thereof, the said United States Marshal has sold the Power Boat "Dola Lawson", to E. T. Lawson and H. L. Corkran for the sum of Sixteen Hundred and Fifty Dollars ($1,650.00) cash, which sum has been paid into the registry of the Court of the credit of this cause, the Court doth approve and confirm the said report.

And the Court having, on June 12th, 1928, found, from the evidence heard in open Court, that Ruffin Collie was entitled to recover of and from the Power Boat "Dola Lawson" and/or Thomas D. Fergusson, her owner, the full amount of his wages, as claimed in his libel and petition, to-wit, the sum of Three Hundred and (64) Ninety-Five ($395.00) Dollars, together with interest on his said wages, as the same became due and payable and has a prior lien against the above proceeds of sale for said sum and interest, it does so ADJUDGE, ORDER AND DECREE.

And the Court having, on June 8th, 1928, found, from the evidence heard in open Court, that Clinton Cook was entitled to recover of and from the Power Boat "Dola Lawson" and/or Thomas D. Fergusson, her owner, the full amount of his wages, as claimed in his libel and petition, to-wit, the sum of Three Hundred and Eighty Dollars ($380.00), together with interest on his said wages, as the same became due and payable, and has a prior lien against the above proceeds for sale for said sum and interest, it does so ADJUDGE, ORDER AND DECREE.

And it appearing to the Court, after hearing the evidence of Respondent Fergusson, who testified as an adverse witness on behalf of the repair and supply lien claimants, that Robbie Rowe, one of the petitioners herein has not established his claim, and that therefore the same should be denied, it does so ADJUDGE, ORDER and DECREE.

And the Court being of the further opinion that F. W. Darling and J. S. Darling, trading as J. S. Darling and Son, are entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Twenty-Seven Dollars and Twenty-One Cents ($27.21), with interest thereon from March 30th, 1928, until paid, for certain supplies or other necessaries furnished to said Power Boat within a year prior to May 14th, 1928, the date that this suit was instituted, and are entitled to recover the balance of their claim amounting to Five Hundred and Fifteen Dollars and Eighty-Six Cents ($515.86) with interest thereon from May 11st, 1927, in addition to such portion of their said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER and DECREE.

(65) And the Court being of the opinion that Nye, The Engine Man, Incorporated, is entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Three Hundred and Twenty-One Dollars and Seventy-One Cents ($321.71) with interest thereon from May 9th, 1928, until paid, for certain supplies and other necessaries furnished to said Power Boat "Dola Lawson" within a year prior to May 14th, 1928, the date that this

suit was instituted and is entitled to recover the balance of its claim, amounting to Fifty Eight Dollars and Fifty-Six Cents ($58.56), with interest theron from April 14th, 1927, in addition to such portion of its said prior claims as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER and DECREE.

And the Court being of the further opinion that S. M. Sinclair is entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Ninety-Nine Dollars and Thirty-One Cents ($99.31), with interest thereon from May 10th, 1928, until paid, for certain supplies and other necessaries furnished to the said Power Boat, within a year prior to May 14th, 1928, the date that this suit was instituted and is entitled to recover the balance of his claim, amounting to Two Hundred Fifty Six Dollars and Eighteen Cents ($256.18), with interest thereon from April 23rd, 1927, in addition to such portion of his prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER and DECREE.

And the Court being of the opinion that E. T. Lawson and I. E. Lawson, partners trading as E. T. Lawson and Son, are entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Five Hundred and Ninety Two Dollars and Twenty-Eight Cents ($592.28), with interest thereon from May 12th, 1928, until paid, for certain supplies or other necessaries furnished to said Power Boat within a year prior to May 14th, 1928, the date that this suit was instituted, and are entitled to recover the balance of their claim amounting to Ninety Five Dollars and Eight Cents ($95.08) with interest thereon from April 26th, 1927, in addition to such (66) portion of their said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER and DECREE.

And the Court being of the further opinion that W. J. Williamson, trading as Williamsons', is entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Thirty Dollars and Forty-One Cents ($30.41), with interest thereon from March 27th, 1928, until paid, for certain supplies or other necessaries fur-

nished to said Power Boat within a year prior to May 14th, 1928, and is entitled to recover such portion of his said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER and DECREE.

And the Court being of the opinion that L. Johnson and H. L. Cockran, partners trading as Johnson and Corkran, are entitled to recover of and from the said Power Boat "Dola Lawson", the sum of Four Hundred and Twenty-Three Dollars and Fifty Cents ($423.50), with interest thereon from July 16th, 1927, until paid, for certain supplies or other necessaries furnished to said Power Boat within a year prior to May 14th, 1928, the date that this suit was instituted, and are entitled to recover such portion of their said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER and DECREE.

And the Court being of the further opinion that J. V. Bickford is entitled to recover of and from the said Power Boat "Dola Lawson", the sum of Forty Two Dollars and Twenty-Five Cents ($42.25) with interest thereon from April 30th, 1928, until paid, for certain supplies or other necessaries furnished to said Power Boat within a year prior to May 14th, 1928, the date on which this suit was instituted, and is entitled to recover such portion of his said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER and DECREE.

And it appearing that the claim of J. C. Council, in (67) the sum of Ninety Dollars and Thirty-Five Cents ($90.35), with interest from April 2nd, 1927, against the said Power Boat "Dola Lawson" and/or Thomas D. Fergusson, for certain supplies or other necessaries furnished to said Power Boat, did not accrue within one (1) year prior to May 14th, 1928, the date on which this suit was instituted, and that therefore said claim is not entitled to share in the aforesaid proceeds of sale now in the registry of the Court, but that said J. C. Council is entitled to recover the amount of said claim of and from only the said Thomas D. Fergusson, it does so ADJUDGE, ORDER and DECREE.

And it appearing to the Court that after the payment in full of the amounts recovered by said seamen as wages, there will not be sufficient to pay in full the claims of other maritime lien claimants, and the Court being of the opinion that the contract of employment between the respondent Fergusson, owner of said Power Boat "Dola Lawson", and the said seamen is in the nature of a hiring at will, which could have been terminated at any time by either party, and being further of the opinion that said employment might have been terminated by said seamen at any time during the course of the same and a claim made for penalties under said section, but that they permitted said employment, without taking action to recover said wages or penalties, to run on for such length of time until the wages along practically amounted to the sale value of said Power Boat, and that the other maritime lien claimants should not be required to suffer by reason of the delay of said seamen in enforcing their claim for penalties, it is ORDERED by the Court that the claims of the seamen petitions for penalties under Section 4329 R. S. U. S., be and the same hereby are disallowed.

And it further appearing that there is now on deposit in the Norfolk National Bank of Commerce and Trusts to the credit of this cause the sum of Sixteen Hundred and Fifty Dollars ($1,650.00), the proceeds of sale of said vessel, and that, except as to the claims for (68) earned wages, together with accumulated interest thereon, which constitutes prior liens against the same, the said fund is insufficient to pay all the allowed lien claims, with costs, in full, and that the same should be distributed as hereafter set out, to-wit, to the claimants of seamen's wages the full amount of their earned wages and interest, as aforesaid, and to the other lien claimants who extended credit to the said vessel within one year prior to May 14th, 1928, the date on which this suit was instituted, .299459+ of their respective lien claims, as hereinabove set forth, the Court doth further AD-JUDGE, ORDER and DECREE that the Clerk of the Court do draw his checks, on the Norfolk National Bank of Commerce and Trusts, out of the fund now in the registry of the Court to the credit of this cause, in favor of the following parties in payment of the sums set op-

posite their respective names, said checks to be countersigned by the Judge of this Court and to be as follows, to-wit:

To J. L. Morewitz, proctor for Ruffin Collie:	402.57
To Clarence G. Smithers, United States Marshal, for Marshal's fees:	38.78
To Virginian-Pilot Publishing Company for advertising bills:	19.08
To Phlegar & Tilghman for stenographer's fees:	15.00
To J. S. Darling & Son, for guard hire:	92.50
To Kelsey & Jett, taxed proctor's fee:	10.00
To J. L. Morewitz, proctor for Ruffin Collie:	402.57
Carried Forward:	$632.53
Brought Forward:	$632.53
To J. L. Morewitz, proctor for Clinton Cook:	387.95
To Kelsey & Jett, proctors for J. S. Darling & Son	12.34
To Walter Sibert, proctor for Nye The Engine Man, Incorporated:	129.93
(69) To Kelsey & Jett, proctors for S. M. Sinclair:	40.92
To Hughes, Little & Seawell, proctors for E. T. Lawson & Son:	236.93
To Kelsey & Jett, Proctors for W. J. Williamson:	13.61
To Henry Bowden & S. E. Forward, proctors for Johnson & Corkran:	178.15
To J. W. Bickford:	18.24
	$1,650.00

And it appearing to the Court, from statements made in open Court by the proctors for the seamen petitioners, that they desire to appeal from that portion of this decree which denies said seamen "waiting time" under Section 4529 of the Revised Statutes of the United States, it is ORDERED that the Clerk of this Court retain in his possession the checks herein directed to be drawn, for the period of thirty (30) days to permit said seamen to perfect their appeal if they so desire.

.....
United States District Judge.

Norfolk, Virginia.

(70) **DISTRICT COURT'S CERTIFICATION OF NARRATIVE.**

I, D. Lawrence Groner, United States District Judge for the Eastern District of Virginia, do hereby certify that the above statement of the evidence, appears to be true, complete and properly prepared, and the same is hereby approved.

Given under my hand this 2 day of January, 1929.

D. LAWRENCE GRONER,
United States District Judge.

(71) **FINAL DECREE.**

Filed September 4th, 1928.

(Title omitted.)

This cause came on this day to be again heard on the pleadings and proof, the decree of sale entered herein on June 2nd, 1928, and the Marshal's report of sale filed on June 20th, 1928, and was argued by counsel.

On consideration whereof, it appearing to the Court from the report of Clarence G. Smithers, United States Marshal, filed herein, that pursuant to the decree entered herein on June 2nd, 1928, and in accordance with the terms thereof, the said United States Marshal has sold the Power Boat "Dola Lawson" to E. T. Lawson and H. L. Corkran for the sum of Sixteen Hundred and Fifty Dollars ($1,650.00) cash, which sum has been paid into the registry of the Court to the credit of this cause, the Court doth approve and confirm the said report.

And the Court having on June 12th, 1928, found from the evidence heard in open Court, that Ruffin Collie was entitled to recover of and from the Power Boat "Dola

Lawson" and/or Thomas D. Fergusson, her owner the full amount of his wages, as claimed in his libel and petition, to-wit, the sum of Three Hundred and Ninety-five Dollars ($395.00), together with interest on his said wages, as the same became due and payable and has a prior lien against the above proceeds of sale for said sum and interest, it does so ADJUDGE, ORDER AND DECREE.

And the Court having, on June 8th, 1928, found, from the evidence heard in open Court, that Clinton Cook was entitled to recover of and from the Power Boat "Dola Lawson" and/or Thomas D. Fergusson, her owner, the full amount of his wages, as claimed in his libel and petition, to-wit, the sum of Three Hundred and (72) Eighty Dollars ($380.00), together with interest on his said wages, as the same became due and payable, and has a prior lien against the above proceeds of sale for said sum and interest, it does so ADJUDGE, ORDER AND DECREE.

And the Court being of the opinion, from the evidence submitted, that Robbie Rowe is entitled to recover of and from the Power Boat "Dola Lawson" and/or Thomas D. Fergusson, her owner, the full amount of his wages, as claimed in his libel and petition, to-wit, the sum of One Hundred and Forty-Five Dollars ($145.00), together with interest on his said wages, as the same became due and payable, and has a prior lien against the above proceeds of sale for said sum and interest, it does so ADJUDGE, ORDER AND DECREE.

And the Court being of the further opinion that F. W. Darling and J. S. Darling, trading as J. S. Darling and Son, are entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Twenty-Seven Dollars and Twenty-One Cents ($27.21), with interest thereon from March 30th, 1928, until paid, for certain supplies or other necessaries furnished to said Power Boat within a year prior to May 14th, 1928, the date that this suit was instituted, and are entitled to recover the balance of their claim amounting to Five Hundred and Fifteen Dollars and Eighty-Six Cents ($515.86) with

interest thereon from May 11th, 1927, in addition to such portion of their said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER AND DECREE.

And the Court being of the opinion that Nye, The Engine Man, Incorporated, is entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Three Hundred and Twenty-One Dollars and Seventy-One Cents ($321.71) with interest thereon from May 9th, 1928, until paid, for certain supplies and other necessaries furnished to said Power Boat "Dola Lawson" (73) within a year prior to May 14th, 1928, the date that this suit was instituted and is entitled to recover the balance of its claim, amounting to Fifty-Eight Dollars and Fifty-Six Cents ($58.56), with interest thereon from April 14th, 1927, in addition to such portion of its said prior claim as is not paid in full, from the said Thomas B. Fergusson, it does so ADJUDGE, ORDER AND DECREE.

And the Court being of the further opinion that S. M. Sinclair is entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Ninety-Nine Dollars and Thirty-One Cents ($99.31) with interest thereon from May 10th, 1928, until paid, for certain supplies and other necessaries furnished to the said Power Boat, within a year prior to May 14th, 1928, the date that this suit was instituted and is entitled to recover the balance of his claim, amounting to Two Hundred and Fifty-Six Dollars and Eighteen Cents with interest thereon from April 23rd, 1927, in addition to such portion of his prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER AND DECREE.

And the Court being of the opinion that E. T. Lawson and I. E. Lawson, partners trading as E. T. Lawson and Son, are entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Five Hundred and Ninety-Two Dollars and Twenty-Eight Cents ($592.28), with interest thereon from May 12th, 1928, until paid, for certain supplies or other necessaries furnished to said Power Boat within a year prior to May

14th, 1928, the date that this suit was instituted, and are entitled to recover the balance of their claim amounting to Ninety-Five Dollars and Eight Cents ($95.08), with interest thereon from April 26th, 1927, in addition to such portion of their said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so AD-JUDGE, ORDER AND DECREE.

(74) And the Court being of the further opinion that W. J. Williamson, trading as Williamsons', is entitled to recover of and from the said Power Boat "Dola Lawson" the sum of Thirty Dollars and Forty-One Cents ($30.41), with interest thereon from March 27th, 1928, until paid, for certain supplies of other necessaries furnished to said Power Boat within a year prior to May 14th, 1928, and is entitled to recover such portion of his said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER AND DECREE.

And the Court being of the opinion that L. Johnson and H. L. Corkran, partners trading as Johnson and Corkran, are entitled to recover of and from the said Power Boat "Dola Lawson", the sum of Four Hundred and Twenty-Three Dollars and Fifty Cents ($423.50) with interest thereon from July 16th, 1927, until paid, for certain supplies or other necessaries furnished to said Power Boat within a year prior to May 14th, 1928, the date that this suit was instituted, and are entitled to recover such portion of their said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER AND DECREE.

And the Court being of the further opinion that J. V. Bickford is entitled to recover of and from the said Power Boat "Dola Lawson", the sum of Forty-Two Dollars and Twenty-Five Cents ($42.25) with interest thereon from April 30th, 1928, until paid, for certain supplies or other necessaries furnished to said Power Boat within a year prior to May 14th, 1928, the date on which this suit was instituted, and is entitled to recover such portion of his said prior claim as is not paid in full, from the said Thomas D. Fergusson, it does so ADJUDGE, ORDER AND DECREE.

And it appearing that the claim of J. C. Council, in the sum of Ninety Dollars and Thirty-Five Cents (75) ($90.35), with interest from April 2nd, 1927, against the said Power Boat "Dola Lawson" and/or Thomas D. Fergusson, for certain supplies or other necessaries furnished to said Power Boat, did not accrue within one (1) year prior to May 14th, 1928, the date on which this suit was instituted, and that therefore said claim is not entitled to share in the aforesaid proceeds of sale now in the registry of the Court, but that said J. C. Council is entitled to recover the amount of said claim of and from only the said Thomas D. Fergusson, it does so ADJUDGE, ORDER AND DECREE.

And the Court being of opinion that the seamen petitioners herein are not entitled to any "waiting time", under Section 4529 of the Revised *States*, as amended, it does so ADJUDGE, ORDER AND DECREE.

And it further appearing that there is now on deposit in the Norfolk National Bank of Commerce & Trusts to the credit of this cause the sum of Sixteen Hundred and Fifty ($1,650.00) the proceeds of sale of said vessel, and that, except as to the claims for earned wages, together with accumulated interest thereon, which constitute prior liens against the same, the said fund is insufficient to pay all the allowed lien claims, with costs, in full, and that the same should be distributed as hereafter set out, to-wit, to the claimants of seamen's wages the full amount of their earned wages and interest, as aforesaid, and to the other lien claimants who extended credit to the said vessel within one year prior to May 14th, 1928, the date on which this suit was instituted, .28714 of their respective lien claims, as hereinabove set forth, the Court doth further ADJUDGE, ORDER AND DECREE that the Clerk of the Court do draw his checks, on the Norfolk National Bank of Commerce & Trusts, out of the fund now in the registry of the Court to the credit of this cause, in favor of the following parties in payment of the sums set opposite their respective names, said checks to be countersigned by the Judge of this Court and to be as follows, to-wit:

(76) To Joseph P. Brady, Clerk, Clerk's fees $54.60
To Clarence G. Smithers, United States Marshal, for Marshal's fees $38.78
To Virginian-Pilot Publishing Company for advertising bills, $19.08
To Phlegar & Tilghman for Stenographers' fees $15.00
To H. C. Ivy for Stenographer's fees $10.00
To J. S. Darling & Son, for guard hire $92.50
To Kelsey & Jett, taxed proctor's fee $10.00
To J. L. Morewitz, proctor's fee for attending depositions $5.00
To J. L. Morewitz, proctor for Ruffin Collie, $402.57
To J. L. Morewitz, proctor for Clinton Cook, $388.00
To J. L. Morewitz, proctor for Robbie Rowe $151.50
To Kelsey & Jett, proctors for J. S. Darling & Son $7.97
To Walter Sibert, proctor for Nye The. Engine Man, Incorporated, $93.54
To Kelsey & Jett, proctors for S. M. Sinclair, $28.87
To Hughes, Little & Seawell, proctors for E. T. Lawson & Son, $172.19
To Kelsey & Jett, proctors for W. J. Williamson, $ 8.90
To Henry Bowden & S. E. Forwood, proctors for Johnson & Corkran, $129.20
To J. V. Bickford, $12.30

$1,650.00

(77) And it appearing to the Court, from statements made in open Court by the proctors for the seamen petitioners, that they desire to appeal from that portion of this decree which denies said seamen "waiting time" under Section 4529 of the Revised Statutes of the United States, it is ordered that ~~the Clerk of this Court retain in his possession the checks for taxed proctors' fees and the checks herein directed to be drawn in favor of the lien claimants, other than said seamen,~~ *this decree be*

suspended until the expiration of the time allowed by law and the rules of this Court for the perfection of such an appeal, ~~but the other checks, directed to be drawn to cover the costs ordered to be paid and the wage claims allowed, shall be delivered to the respective parties forthwith, without prejudice to any of the rights of the said seamen petitioners, in the premises, and especially as to their right to prosecute their said appeal.~~

D. LAWRENCE GRONER,
United States District Judge.

Norfolk, Virginia.

(78) (Caption omitted.)

ORDER DIRECTING PAYMENT OF COSTS OUT OF FUND IN THE REGISTRY.

Filed September 24, 1928.

It appearing to the Court that there are certain fees due and payable to the Clerk and Marshal in this cause and that the deposit made at the time of the institution of the suit is inadequate to pay said fees,

And it further appearing to the Court that the proceeds of the sale of said Power Boat Dola Lawson are now on deposit in the registry of the Court from which said fees are payable,

On consideration whereof, it is ordered by the Court that the Clerk of this Court, or his Deputy, do draw his check on the funds to the credit of this Court in the Norfolk National Bank of Commerce and Trusts, Norfolk, Virginia, in favor of Joseph P. Brady, Clerk, for the sum of Fifty Dollars ($50.00), and said Clerk is directed to pay said fees from said sum and account for the residue, if any, in accordance with law; said check to be countersigned by the Judge of this Court.

D. LAWRENCE GRONER,
United States District Judge.

Norfolk, Virginia.

(79) **PETITION FOR APPEAL AND ASSIGNMENT OF ERRORS.**

Filed Nov. 30, 1928.

IN THE U. S. DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA.

Ruffin Collie, Clinton Cook and Robbie Rowe, Intervening Libellants-Appellants,
v.
Power Boat "Dola Lawson" and/or Thomas D Fergusson, her owner, Respondents-Appellees,
and
F. W. Darling and J. S. Darling, trading as J. S. Darling and Son, Libellants-Appellees,
and
Nye, The Engine Man, Incorporated, et als., Intervening Libellants-Appellees
} In Admiralty.

To the Honorable Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

The petition of Ruffin Collie, Clinton Cook and Robbie Rowe, the intervening libellants-appellants herein, acting pusuant to the Act of Congress dated July 1, 1918, (being U. S. Code 28:837), permitting seamen to sue and appeal without requiring prepayment of or any security for costs, respectfully *shows* that they are aggrieved by a final decree entered in the above cause by the District Court of the United States for the Eastern District of Virginia, at Norfolk, on the Fourth day of September, 1928.

Petitioners assign the following errors:

1. The Court erred in concluding: "that the seamen petitioners herein are not entitled to any 'waiting time'," under Section 4529 of the Revised Statutes, as amended.

2. The Court erred in not allowing each of said sea-

men petitioners the "waiting time", provided by Cosgress, until their respective earned wages, and the ac-
(80) crued indemnities due them for the refusal and neglect to pay the same, are received by them.

3. The Court erred in denying said appellants any "waiting time" for the refusal and neglect to pay them, after finding that each of them were: "entitled to recover of and from the Power Boat 'Dola Lawson' and/or Thomas D. Fergusson, her owner, the full amount of his wages, as claimed in his libel and petition * * * together with interest on his said wages, as the same became due and payable, and has a prior lien against the above proceeds of sale for said sum and interest,' especially after so finding in open Court on June 8, 1928, and June 12, 1928, (three months prior to the entrance of the final decree herein), as to the wages clamed by appellants Cook and Collie, respectively.

4. The Court erred in not holding that appellants Ruffin Collie and Clinton Cook were each entitled to damages for the breach of their respective contracts of hire, including, in the case of appellant Ruffin Collie, return transportation and subsistence to Washington, North Carolina, the port of his shipment.

5. The Court erred in refusing to permit appellants to obtain the wages respectively decreed them, *without prejudice* to their right to appeal from the portion of the decree denying their respetive claims for "waiting time" and/or breach of contract, as set up in their intervening libels and petitions.

6. The Court erred in suspending, over their objec-
tion, the payment of the wages, interest and costs ad-
judged to be due the appellants in the final decree en-
(81) tered on September 4, 1928.

7. The Court erred in not directing the *immediate* payment from the fund in the Registry, of the amounts decreed appellants, along with their costs, as prayed for

in their respective petitions, continuously contended for on their behalf throughout these proceedings and again outlined in the drafts of final decree submitted by them on July 16, 1928, and August 17, 1928, respectively.

WHEREFORE for these and other errors apparent on the face of the record the petitioners hereby appeal from that portion of the said decree, allowing them merely their earned wages and interest, to the Circuit Court of Appeals for the Fourth Circuit, and pray that the same, together with a full transcript of the record, may be sent to the said Court without delay; that the said Court will proceed to hear said cause; that the aforesaid decree may be modified to the extent of allowing the respective petitioners the additional sums due each of them for "waiting time" and/or breach of contract, as demanded in their respective pleadings; and that said petitioners may have such other and further relief as in law and justice they may be entitled to receive.

RUFFIN COLLIE,
CLINTON COOK &
ROBBIE ROWE,

By J. L. MOREWITZ,
Their Proctor.

PERCY CARMEL,
Of Counsel.

(82) **APPELLANT'S PRAECIPE.**

Filed December 26, 1928.

To the Clerk of the District Court:

The intervening libellants-appellants hereby indicate the following portions of the record to be incorporated in the transcript for the appeal now being taken by them:

(1) The pleadings, (Itemized statements to be omitted).

(2) The evidence in narrative form, together with the exhibits therein referred to and the certificate of the Judge of the District Court as to the said evidence.

(3) All original exhibits offered in evidence, as well as the original of the final decree entered on September 4, 1928, and the draft of final decree submittd by supply and repair lien claimants, to be certified by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals, the same to be subject to the inspection and consideration of the appellate court and of counsel for the parties, respectively but that in addition thereto the following exhibits, or the following portions thereof, for convenient reference, shall be made a part of the Transcript of Record, to-wit: "A"—Exhibits numbered 1 to 6, introduced by appellants; "B"—The draft of decree submitted by supply and repair lien claimants.

(4) The final decree entered on September 4, 1928.

(5) The Notice of Appeal.

(6) The Petition for Appeal and Assignment of Errors.

(83) (7) *Introlocutory* Decree, Directing Sale by Marshal, entered on June 2, 1928.

(8) Marshal's Report of Sale, filed June 20, 1928.

(9) Order Directing Payment of Certain Costs Out of Fund in Registry.

(10) All appeal papers.

(11) Stipulations of counsel.

J. L. MOREWITZ,
Proctor for Appellants.

(84) **DETERMINATION OF THE COURT AS TO CONTENTS OF TRANSCRIPT.**

Filed January 2, 1928.

Ruffin Collie, Clinton Cook and Robbie Rowe, Intervening Libellants-Appellants,
v.
Power Boat "Dola Lawson" and/or Thomas D. Fergusson, her owner, Respondents-Appellees,
and
F. W. Darling and J. S. Darling, trading as J. S. Darling and Son, Libellants-Appellees,
and
Nye, The Engine Man, Incorporated, et als., Intervening Libellants-Appellees.
} In Admiralty.

The appellants having filed their *praecipe* herein on the 26th day of December, 1928, it is now hereby ORDERED, ADJUDGED and DECREED that the record in this case upon appeal shall consist of the following and the Clerk of this Court is directd to forthwith proceed to transmit a certified copy of the said transcript to the Circuit Court of Appeals for the Fourth Circuit, to-wit:

(1) The pleadings, omitting itemized statements therefrom.

(2) The evidence in narrative form, together with the exhibits therein referred to and the certificate of the Judge of the District Court as to the said evidence.

(3) All original exhibits offered in evidence, as well as the original of the final decree and the draft of decree submitted by the supply and repair lien claimants, to be certified by the Clerk of the District Court to the Clerk of the Circuit Court of Appeals, the same to be subject to the inspection and consideration of the appellate Court and of counsel for the parties, respectively,

but that in addition thereto the following exhibits, or the following portions thereof, for convenient reference, shall be made a part of the Transcript of Record, to-wit:

"A"—Exhibits Numbered 1 to 6, introduced by appellants;

"B"—The draft of decree submitted by supply and repair lien claimants.

(85) (4) The final decree entered on September 4, 1928.

(5) The Notice of Appeal.

(6) The Petition for Appeal and Assignment of Errors.

(7) *Introlocutory* Decree, Directing Sale by Marshal, entered on June 2, 1928.

(8) Marshal's Report of Sale, filed June 20, 1928.

(9) Order Directing Payment of Certain Costs Out of Fund in Registry.

(10) All appeal papers.

(11) Stipulations of counsel.

D. LAWRENCE GRONER,
U. S. District Judge.

Norfolk, Virginia.

(86) **MEMORANDUM OF ORIGINAL PAPERS ACCOMPANYING TRANSCRIPT OF RECORD.**

1. Petition for appeal.

2. Order allowing appeal.

3. Notice of appeal. Service accepted.

4. Citation. Service accepted.

(87) **CERTIFICATE OF THE CLERK.**

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the foregoing is a full and true transcript of the record of the proceedings and judgment of the said Court, as directed by the Court, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of said Court, at Norfolk, in said District, this 5th day of January, A. D. 1929.

JOSEPH P. BRADY,
(Seal) Clerk, U. S. District Court.

By: PAUL R. FLANAGAN,
Deputy Clerk.

(88) **PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.**

No. 2831.

Ruffin Collie, Clinton Cook and Robbie Rowe,
Appellants,

versus

Thomas D. Fergusson; F. W. Darling and J. S. Darling, trading as J. S. Darling & Son; S. M. Sinclair; W. J. Williamson; J. C. Council; Nye, the Engine Man, Incorporated; E. T. Lawson and I. E. Lawson, trading as E. T. Lawson & Son; L. Johnson and H. L. Corkran, trading as Johnson & Corkran, and J. V. Bickford,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Virginia, at Norfolk.

January 8, 1929, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, notice of appeal, and citation are certified up under Sec. 7 of Rule 14.

Same day, the original exhibits (documents) are certified up.

Same day, the appearance of J. L. Morewitz is entered for the appellants.

ORDER ALLOWING APPELLANTS TO PROSECUTE APPEAL WITHOUT PREPAYMENT OF COSTS.

Filed January 11, 1929.

(Style of Court and Title Omitted.)

IT APPEARING TO THE COURT THAT THIS cause was prosecuted by the appellants in the District (89) Court in accordance with the Act of Congress dated July 1, 1918, (28 U. S. Code #837) which permits seamen to sue and appeal, without security or prepayment of costs, for the enforcement of the laws of the United States enacted for the protection, health and safety of seamen,

IT IS NOW HERE ORDERED that the Appellants be, and they are hereby, allowed to further prosecute their several causes of action in this Court, as such seamen, in accordance with the aforesaid Act of Congres, which was approved on July 1, 1918; that the Clerk of this Court be, and he is hereby directed to docket this cause, and that the same be heard on the original record, without requiring from the said Appellants any security for their costs or the prepayment of same, but the cost of preparing and certifying said record is to abide the final determination of the cause.

Richmond, Va., Jany. 11, 1929.

EDMUND WADDILL, JR.,
U. S. Circuit Judge.

January 28, 1929, stipulation to place case at the foot of the docket for argument at the January term, 1929, is filed.

April 4, 1929, the appearance of D. Arthur Kelsey and R. Arthur Jett is entered for the appellees J. S. Darling & Son, S. M. Sinclair, E. T. Lawson & Son, Williamson and Johnson & Corkran.

April 11, 1929, stipulation as to the time for the filing of appellees' brief is filed.

April 22, 1929, two typewritten copies of the transcript of record are filed.

ARGUMENT OF CAUSE.

April 22, 1929, (April term, 1929) cause came on to be heard before Waddill, Parker and Northcott, Circuit Judges, and is argued by counsel and submitted.

(90) **PER CURIAM OPINION.**

Filed May 2, 1929.

UNITED STATES CIRCUIT COURT OF APPEALS

Fourth Circuit.

No. 2831.

Ruffin Collie, Clinton Cook and Robbie Rowe,
Appellants,

versus

Thomas D. Fergusson; F. W. Darling and J. S. Darling, trading as J. S. Darling & Son; S. M. Sinclair; W. J. Williamson; J. C. Council; Nye, the Engine Man, Incorporated; E. T. Lawson and I. E. Lawson, trading as E. T. Lawson & Son; L. Johnson and H. L. Corkran, trading as Johnson & Corkran, and J. V. Bickford, Appellees.

Appeal from the District Court of the United States for the Eastern District of Virginia, at Norfolk.
In Admiralty.

(Argued April 22, 1929. Decided May 2, 1929.)

Before WADDILL, PARKER and NORTHCOTT, Circuit Judges.

JACOB L. MOREWITZ (PERCY CARMEL on brief) for Appellants, and D. ARTHUR KELSEY (KELSEY & JETT on brief) for J. S. DARLING & SON; S. M. SINCLAIR, E. T. LAWSON & SON, W. J. WILLIAMSON and JOHNSON & CORKRAN, Appellees.

PER CURIAM:

(91) We have duly considered the questions arising upon the petition for appeal from the decree of the District Court filed in this cause on September 4, 1928, and the conclusion reached by us is that the decree should be affirmed.

And it appearing that the amounts found to be due appellants were withheld from them pending this appeal at the instance of appellees, although appellees did not appeal from the order allowing same, we think it but right that appellants be allowed interest for the time during which the amounts due them have been thus withheld, and that the costs on appeal be divided.

Affirmed.

(92) **DECREE.**

Filed and Entered May 2, 1929.

UNITED STATES CIRCUIT COURT OF APPEALS

Fourth Circuit.

No. 2831.

Ruffin Collie, Clinton Cook and Robbie Rowe, Appellants,

vs.

Thomas D. Fergusson; F. W. Darling and J. S. Darling, trading as J. S. Darling & Son; S. M. Sinclair; W. J. Williamson; J. C. Council; Nye, the Engine Man, Incorporated; E. T. Lawson and I. E. Lawson, trading as E. T. Lawson & Son; L. Johnson and H. L. Corkran, trading as Johnson & Corkran, and J. V. Bickford, Appellees.

Appeal from the District Court of the United States for the Eastern District of Virginia.

THIS CAUSE came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Virginia, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court, in this cause, be, and the same is hereby, affirmed with interest to the Appellants herein from the date of the decree of the said

District Court until paid, and that the costs on this appeal be divided between the Appellants and the Appellees

May 2nd, 1929.

EDMUND WADDILL, JR.,
Senior Circuit Judge.

(93) **PETITION OF APPELLANTS FOR A REHEARING.**

Presented May 28, 1929.

(Style of Court and Title Omitted.)

MAY IT PLEASE THE COURT:

Ruffin Collie, Clinton Cook and Robbie Rowe, the appellants in this cause, humbly complaining of the decision rendered therein on May 2, 1929, petition this Honorable Court to grant them a rehearing, the grounds therefor being as follows:

I. *This Court's Per Curiam Opinion modifies the Decree of the District Court (unsupported by any opinion), without giving effect to either the applicable decisions of the Supreme Court of the United States, the previous opinions of this Court, the similar cases decided by three different District Courts in this Circuit, or the great weight of authority.*

Compare: *The Steel Trader*, 275 U. S. 388, adopting *Calvin* v. *Huntley*, 178 Mass. 29, 32; 59 N. E. 435; *Pacific Mail S. S. Co.* v. *Schmidt*, 241 U. S. 245, citing *Palace Shipping Co.* v. *Caine*, A. C. 386 (House of Lords, July 29, 1907); *Hicks* v. *Guiness*, 269 U. S. 71; *The Charles Whittemore* (C. C. A. 4), 11 F. (2d) 344; *The Walter D. Noyes* (C. C. A. 4), 20 F. (2d) 342, 21 F. (2d) 607; *The Ella Pierce Thurlow* (C. C. A. 4), 25 F. (2d) 835; *The Lake Galewood* (C. C. A. 4), 21 F. (2d) 987; 25 F. (2d) 1020; *The Trader*, 17 F. (2d) 623; *The Fort Gaines*, 18 F. (2d) 413; *The Chester*, 25 F. (2d) 908; *Gerber* v. *Spencer* (C. C. A. 9), 278 F. 886;

Vincent v. *U. S.* (C. C. A. 9), 272 F. 889; *Buckley* v. *Oceanic* (C. C. A. 9), 5 F. (2d) 545; *The Astoria* (C. C. A. 5), 281 F. 618, 621; *The El Estro*, 14 F. (2d) 349, (C. C. A. 5), 25 F. (2d) 349; *Cox* v. *Lykes*, 237 N. Y. 376, 143 N. E. 226; *Burns* v. *Davis* (C. C. A. 1), 271 F. 889; *Covert* v. *British Brig Wexford*, 3 Fed. 577, 578, 579; *The Great Canton*, 299 F. 953; *The Nika*, 287 F. 6717; *The Morning Star*, 1 F. (2d) 410; *Caffyn* v. *Peabody*, 149 Fed. 294.

II. *The fact that the vessel's owner and master, appellee Fergusson, (against whom personal judgments in favor of the other lienors are sustained) defaulted in the Trial Court, as well as in this Court, and still "refuses or neglects to make payment * * * without sufficient cause", after testifying that: "The claims asserted by Ruffin Collie and Clinton Cook in their intervening libel* (94) *are correct", has been overlooked or disregarded.*

Compare: Judicial and legislative history of U. S. C. Title 46, #596. See especially those of the above cited cases that construe this remedial statute. Also *Everett* v. *U. S.*, 277 F. 256, (C. C. A. 9), 284 F. 203, certiorari denied 261 U. S. 615.

III. *After deciding: "That the amounts found to be due appellants were withheld from them pending this appeal at the instance of appellees," this Court erred in not following the plain mandate of U. S. C. Title 46 #596, by awarding the Statutory wages provided therein, together with full costs, instead of merely: "Interest for the time during which the amounts due them have been thus withheld and that the costs on appeal be divided."*

Compare especially: *The Steel Trader, Palace Shipping Co.* v. *Caine, Hicks* v. *Guiness, The Charles Whittemore, The Ella Pierce Thurlow, The Lake Gaiewood, The Trader, The Fort Gaines, Gerber* v. *Spencer, Cox* v. *Lykes, Covert* v. *British Brig Wexford, The Great Canton, The Nika, The Morning Star, supra; Benedict's Admiralty* (5th Ed.) #561.

CONCLUSION.

The petitioners submit that this case involves questions of every day occurrence; that the case, in view of its practical importance to seamen and shipowners generally, as illustrated by the fact that two similar controversies are now on their way to this Court, does not deserve summary disposition; and that they are entitled to the redress they seek.

They, therefore, pray that a rehearing be granted them.

Respectfully submitted,

J. L. MOREWITZ,
Proctor for Petitioners.

PERCY CARMEL,
Of Counsel.

I hereby certify that the above petition for rehear-
(95) ing is presented in good faith and not for the purpose of delay.

J. L. MOREWITZ.

On another day, to-wit, June 3, 1929, the mandate of this Court in this cause is issued and transmitted to the United States District Court at Norfolk, Virginia, in due form.

Same day, the original petition for appeal, order allowing appeal, and notice of appeal are returned to the Clerk of the United States District Court at Norfolk, Virginia.

Same day, the original exhibits (documents) are returned to the Clerk of the District Court at Norfolk, Virginia.

ORDER DENYING REHEARING.

Filed and Entered July 1, 1929.

UNITED STATES CIRCUIT COURT OF APPEALS.

Fourth Circuit.

No. 2831.

Ruffin Collie, Clinton Cook and Robbie Rowe, Appellants,

vs.

Thomas D. Fergusson; F. W. Darling and J. S. Darling, trading as J. S. Darling & Son; S. M. Sinclair; W. J. Williamson; J. C. Council; Nye, the Engine Man, Incorporated; E. T. Lawson and I. E. Lawson, trading as E. T. Lawson & Son; L. Johnson and H. L. Corkran, trading as Johnson & Corkran, and J. V. Bickford, Appellees.

Appeal from the District Court of the United States for the Eastern District of Virginia, at Norfolk.

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(96) THIS COURT having at its April term, 1929, rendered its decision affirming the decree of the said District Court appealed from in this cause, and the appellants having on May 28, 1929, presented to the Court a petition for a rehearing of the said cause, and the same having been carefully considered,

IT IS NOW HERE ORDERED BY THIS COURT that the rehearing asked for, be, and the same is hereby, denied at the cost of the appellants.

JOHN J. PARKER,
U. S. Circuit Judge.

July 1st, 1929.

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, CLAUDE M. DEAN, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause, as the same remains among the records and files of the said Circuit Court of Appeals.

IN TESTIMONY WHEREOF, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 26th day of August, A. D. 1929.

(Seal.)

CLAUDE M. DEAN, Clerk,
U. S. Circuit Court of Appeals,
Fourth Circuit.

By R. M. F. WILLIAMS, JR.,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 28, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
NOV 25 1
CHARLES ELMORE
CL

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 423

RUFFIN COLLIE, CLINTON COOK AND ROBBIE ROWE, PETITIONERS,

versus

THOMAS D. FERGUSSON; F. W. DARLING AND J. S. DARLING, TRADING AS J. S. DARLING & SON; S. M. SINCLAIR; W. J. WILLIAMSON; J. C. COUNCIL; NYE, THE ENGINE MAN, INCORPORATED; E. T. LAWSON AND I. E. LAWSON, TRADING AS E. T. LAWSON & SON; L. JOHNSON AND H. L. CORKRAN, TRADING AS JOHNSON & CORKRAN, AND J. V. BICKFORD, RESPONDENTS.

MOTION FOR ADVANCEMENT.

Now come the seamen petitioners, and move the court to advance the above entitled cause for hearing on an early day convenient to the court.

This case was brought to this court without prepayment of costs, pursuant to the terms of U. S. C., title 28, section 837 (Seamen's Act of July 1, 1918). Certiorari was granted on October 28, 1929, on which date leave was also granted to file this Motion to Advance.

In the main there is here presented for determination the proper construction of U. S. C., title 46, section 596, in the light of the judicial history of said section and the cognate provisions of the Seamen's Acts of June 7, 1872, and March 4, 1915.

Because of their impecunious condition petitioners

beg leave to refer to their petition and brief heretofore filed on September 26, 1929, for the concise statement of the matter involved herein required by paragraph 4 of Rule 20 of this Honorable Court.

REASONS FOR ADVANCING THE CASE.

The reasons for advancing the case are, that as your petitioners are informed and believe:

1. The case involves a question of gravity and importance.

2. The petitioners are wage earners and this is an action to recover seamen's earned and statutory wages and petitioners' rights are in doubt pending the decision of this Honorable Court upon the issues raised on this appeal, and the rights of many thousands of other seamen and wage earners are in doubt and will be until the questions here raised are determined by this Honorable Court.

3. Questions practically identical to those involved in the present controversy are now pending before the Circuit Court of Appeals for the Fourth Circuit in two similar cases, and are also pending before other Federal and State Courts.

4. The questions involved in this case have been frequently before the Federal and State courts in a number of cases since the passage of the Act in question, and the various courts have construed the Act differently in many respects.

5. Your petitioners understand that Motions to Advance in cases involving cognate sections of the Seamen's Acts of June 7, 1872, and March 4, 1915, have heretofore been granted with practical uniformity.

6. Counsel representing the respondents, as shown on their admissions of service hereof filed with the Clerk, do not desire to be heard in opposition to this Motion to Advance. The application for certiorari was unopposed and petitioners understand that in all probability none of the respondents will put in any appearance before this Honorable Court when the case is argued on the merits.

It is respectfully submitted that it is appropriate that there should be an early hearing of this case by this court in order that the determination of the questions involved in this case may govern the same questions involved in the many other cases pending, that conflicting decisions may be avoided, and that unnecessary expense to parties litigant may be prevented.

JACOB L. MOREWITZ,
Proctor for Petitioners.

PERCY CARMEL,
Of Counsel.